

Order

Entered: February 4, 2003

1998-50
2001-19

Adoption of New Subchapter 3.900,
Deletion of Subchapter 5.900, and
Amendments of Subchapter 6.900
of the Michigan Court Rules

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following new subchapter 3.900 and amendments of subchapter 6.900 of the Michigan Court Rules are adopted, and current subchapter 5.900 is deleted, to be effective May 1, 2003.

COMMENT: THE AMENDMENTS ARE BASED ON PROPOSALS SUBMITTED BY THE FAMILY DIVISION JOINT RULES COMMITTEE APPOINTED BY THE SUPREME COURT. THEY INCLUDE REVISION OF MOST OF THE RULES IN SUBCHAPTER 5.900, WHICH GOVERNS PROCEDURE IN CASES FORMERLY HEARD IN THE JUVENILE DIVISION OF PROBATE COURT, AND IN SUBCHAPTER 6.900, WHICH COVERS CRIMINAL CASES BROUGHT AGAINST JUVENILES, AS WELL AS SEVERAL NEW RULES. THE REVISED RULES FROM SUBCHAPTER 5.900 ARE RELOCATED TO SUBCHAPTER 3.900, IN RECOGNITION OF THE TRANSFER OF JURISDICTION OF SUCH MATTERS TO THE FAMILY DIVISION OF THE CIRCUIT COURT. SEE MCL 600.1001 ET SEQ.

IN ADDITION, A RELATED ORDER IS BEING ENTERED CONCURRENTLY. IT AMENDS A NUMBER OF MISCELLANEOUS RULES IN OTHER CHAPTERS AND THE MICHIGAN RULES OF EVIDENCE TO CORRECT REFERENCES TO THE JUVENILE PROVISIONS.

THIS ORDER SETS FORTH THE TEXT OF THE RULES AS AMENDED. THE MICHIGAN JUDICIAL INSTITUTE WILL BE PREPARING A COMPARISON OF THE OLD AND NEW RULES THAT WILL BE POSTED ON THE SUPREME COURT'S WEBSITE, www.courts.michigan.gov/supremecourt, WHEN AVAILABLE.

THIS COMMENT AND THE NOTES FOLLOWING THE INDIVIDUAL RULES ARE PUBLISHED ONLY FOR THE BENEFIT OF THE BENCH AND BAR AND ARE NOT AN AUTHORITATIVE CONSTRUCTION BY THE COURT.

Subchapter 3.900 Proceedings Involving Juveniles

Rule 3.901 Applicability of Rules

(A) Scope.

- (1) The rules in this subchapter, in subchapter 1.100 and in MCR 5.113, govern practice and procedure in the family division of the circuit court in all cases filed under the Juvenile Code.
- (2) Other Michigan Court Rules apply to juvenile cases in the family division of the circuit court only when this subchapter specifically provides.
- (3) The Michigan Rules of Evidence, except with regard to privileges, do not apply to proceedings under this subchapter, except where a rule in this subchapter specifically so provides. MCL 722.631 governs privileges in child protective proceedings.

(B) Application. Unless the context otherwise indicates:

- (1) MCR 3.901-3.928, 3.980, and 3.991-3.993 apply to delinquency proceedings and child protective proceedings;
- (2) MCR 3.931-3.950 apply only to delinquency proceedings;
- (3) MCR 3.951-3.956 apply only to designated proceedings;
- (4) MCR 3.961-3.978 apply only to child protective proceedings;
- (5) MCR 3.981-3.989 apply only to minor personal protection order proceedings.

NOTE: MCR 3.901 CORRESPONDS TO FORMER RULE 5.901. REFERENCES TO THE RULES APPLICABLE TO VARIOUS TYPES OF PROCEEDINGS ARE CHANGED TO REFLECT THE ADDITION OF NEW RULES. NEW SUBRULE (A)(3) RESTATES THE PRINCIPLE FOUND IN MRE 1101(B)(7) REGARDING THE APPLICABILITY OF THE RULES OF EVIDENCE TO JUVENILE CASES, AND REFERRING TO THE STATUTE ABROGATING PRIVILEGES IN CERTAIN JUVENILE PROCEEDINGS.

Rule 3.902 Construction

- (A) In General. The rules are to be construed to secure fairness, flexibility, and simplicity. The court shall proceed in a manner that safeguards the rights and proper interests of the parties. Limitations on corrections of error are governed by MCR 2.613.
- (B) Philosophy. The rules must be interpreted and applied in keeping with the philosophy expressed in the Juvenile Code. The court shall ensure that each minor coming within the jurisdiction of the court shall:
 - (1) receive the care, guidance, and control, preferably in the minor's own home, that is conducive to the minor's welfare and the best interests of the public; and
 - (2) when removed from parental control, be placed in care as nearly as possible equivalent to the care that the minor's parents should have given the minor.

NOTE: MCR 3.902 IS UNCHANGED FROM FORMER RULE 5.902.

Rule 3.903 Definitions

- (A) General Definitions. When used in this subchapter, unless the context otherwise indicates:
 - (1) "Case" means an action initiated in the family division of the circuit court by:
 - (a) submission of an original complaint, petition, or citation;
 - (b) acceptance of transfer of an action from another court or tribunal; or
 - (c) filing or registration of a foreign judgment or order.
 - (2) "Child protective proceeding" means a proceeding concerning an offense against a child.
 - (3) "Confidential file" means
 - (a) that part of a file made confidential by statute or court rule, including, but not limited to,
 - (i) the diversion record of a minor pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*;
 - (ii) the separate statement about known victims of juvenile offenses, as required by the Crime Victim's Rights Act, MCL 780.751 *et seq.*;
 - (iii) the testimony taken during a closed proceeding pursuant to MCR 3.925(A)(2)

and MCL 712A.17(7);

- (iv) the dispositional reports pursuant to MCR 3.943(C)(3) and 3.973(E)(4);
 - (v) fingerprinting material required to be maintained pursuant to MCL 28.243;
 - (vi) reports of sexually motivated crimes, MCL 28.247;
 - (vii) test results of those charged with certain sexual offenses or substance abuse offenses, MCL 333.5129;
- (b) the contents of a social file maintained by the court, including materials such as
- (i) youth and family record fact sheet;
 - (ii) social study;
 - (iii) reports (such as dispositional, investigative, laboratory, medical, observation, psychological, psychiatric, progress, treatment, school, and police reports);
 - (iv) Family Independence Agency records;
 - (v) correspondence;
 - (vi) victim statements.
- (4) "Court" means the family division of the circuit court.
- (5) "Delinquency proceeding" means a proceeding concerning an offense by a juvenile, as defined in MCR 3.903(B)(3).
- (6) "Designated proceeding" means a proceeding in which the prosecuting attorney has designated, or has requested the court to designate, the case for trial in the family division of the circuit court in the same manner as an adult.
- (7) "Father" means:
- (a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;
 - (b) A man who legally adopts the minor;
 - (c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;

- (d) A man judicially determined to have parental rights; or
 - (e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 722.1001, *et seq.*, or a previously applicable procedure. For an acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the state registrar.
- (8) "File" means a repository for collection of the pleadings and other documents and materials related to a case.
 - (9) An authorized petition is deemed "filed" when it is delivered to, and accepted by, the clerk of the court.
 - (10) "Formal calendar" means judicial proceedings other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency or child protective proceeding.
 - (11) "Guardian" means a person appointed as guardian of a child by a Michigan court pursuant to MCL 700.5204 or 700.5205, by a court of another state under a comparable statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202.
 - (12) "Juvenile Code" means 1944 (1st Ex Sess) PA 54, MCL 712A.1 *et seq.*, as amended.
 - (13) "Legal Custodian" means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state.
 - (14) "Legally admissible evidence" means evidence admissible under the Michigan Rules of Evidence.
 - (15) "Minor" means a person under the age of 18, and may include a person of age 18 or older over whom the court has continuing jurisdiction pursuant to MCL 712A.2a.
 - (16) "Officer" means a government official with the power to arrest or any other person designated and directed by the court to apprehend, detain, or place a minor.
 - (17) "Parent" means the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor.

- (18) "Party" includes the
 - (a) petitioner and juvenile in a delinquency proceeding;
 - (b) petitioner, child, respondent, and parent, guardian, or legal custodian in a protective proceeding.
 - (19) "Petition" means a complaint or other written allegation, verified in the manner provided in MCR 2.114(B), that a parent, guardian, nonparent adult, or legal custodian has harmed or failed to properly care for a child, or that a juvenile has committed an offense.
 - (20) "Petition authorized to be filed" refers to written permission given by the court to file the petition containing the formal allegations against the juvenile or respondent with the clerk of the court.
 - (21) "Petitioner" means the person or agency who requests the court to take action.
 - (22) "Preliminary inquiry" means informal review by the court to determine appropriate action on a petition.
 - (23) "Putative father" means a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7).
 - (24) "Records" means the pleadings, motions, authorized petition, notices, memorandums, briefs, exhibits, available transcripts, findings of the court, register of actions, and court orders.
 - (25) "Register of actions" means the permanent case history maintained in accord with the Michigan Supreme Court Case File Management Standards. See MCR 8.119(D)(1)(c).
 - (26) "Trial" means the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court.
- (B) Delinquency Proceedings. When used in delinquency proceedings, unless the context otherwise indicates:
- (1) "Detention" means court-ordered removal of a juvenile from the custody of a parent, guardian, or legal custodian, pending trial, disposition, commitment, or further order.
 - (2) "Juvenile" means a minor alleged or found to be within the jurisdiction of the court for having committed an offense.
 - (3) "Offense by a juvenile" means an act that violates a criminal statute, a criminal ordinance, a traffic law, or a provision of MCL 712A.2(a) or (d).

- (4) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, and, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.
- (C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates:
- (1) "Agency" means a public or private organization, institution, or facility responsible pursuant to court order or contractual arrangement for the care and supervision of a child.
- (2) "Child" means a minor alleged or found to be within the jurisdiction of the court pursuant to MCL 712A.2(b).
- (3) "Contrary to the welfare of the child" includes, but is not limited to, situations in which the child's life, physical health, or mental well-being is unreasonably placed at risk.
- (4) "Foster care" means 24-hour a day substitute care for children placed away from their parents, guardians, or legal custodians, and for whom the court has given the Family Independence Agency placement and care responsibility, including, but not limited to,
- (a) care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under MCL 722.111 *et seq.*, or
- (b) care provided to a child in a relative's home pursuant to an order of the court.
- (5) "Lawyer-guardian ad litem" means that term as defined in MCL 712A.13a(1)(f).
- (6) "Nonparent adult" means a person who is eighteen years of age or older and who, regardless of the person's domicile, meets all the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:
- (a) has substantial and regular contact with the child,
- (b) has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare, and
- (c) is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.
- (7) "Offense against a child" means an act or omission by a parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the

jurisdiction of the court pursuant to the Juvenile Code.

- (8) "Placement" means court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency.
- (9) "Prosecutor" or "prosecuting attorney" means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.
- (10) Except as provided in MCR 3.977(B), "respondent" means the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child.

(D) Designated Proceedings.

- (1) "Arraignment" means the first hearing in a designated case at which
 - (a) the juvenile is informed of the allegations, the juvenile's rights, and the potential consequences of the proceeding;
 - (b) the matter is set for a probable cause or designation hearing; and,
 - (c) if the juvenile is in custody or custody is requested pending trial, a decision is made regarding custody pursuant to MCR 3.935(C).
- (2) "Court-designated case" means a case in which the court, pursuant to a request by the prosecuting attorney, has decided according to the factors set forth in MCR 3.952(C)(3) that the juvenile is to be tried in the family division of circuit court in the same manner as an adult for an offense other than a specified juvenile violation.
- (3) "Designated case" means either a prosecutor-designated case or a court-designated case.
- (4) "Designation hearing" means a hearing on the prosecuting attorney's request that the court designate the case for trial in the same manner as an adult in the family division of circuit court.
- (5) "Preliminary examination" means a hearing at which the court determines whether there is probable cause to believe that the specified juvenile violation or alleged offense occurred and whether there is probable cause to believe that the juvenile committed the specified juvenile violation or alleged offense.
- (6) "Prosecutor-designated case" means a case in which the prosecuting attorney has endorsed a petition charging a juvenile with a specified juvenile violation with the designation that the juvenile is to be tried in the same manner as an adult in the family division of the circuit court.

- (7) "Sentencing" means the imposition of any sanction on a juvenile that could be imposed on an adult convicted of the offense for which the juvenile was convicted or the decision to delay the imposition of such a sanction.
- (8) "Specified juvenile violation" means any offense, attempted offense, conspiracy to commit an offense, or solicitation to commit an offense, as enumerated in MCL 712A.2d, that would constitute:
- (a) burning of a dwelling house, MCL 750.72;
 - (b) assault with intent to commit murder, MCL 750.83;
 - (c) assault with intent to maim, MCL 750.86;
 - (d) assault with intent to rob while armed, MCL 750.89;
 - (e) attempted murder, MCL 750.91;
 - (f) first-degree murder, MCL 750.316;
 - (g) second-degree murder, MCL 750.317;
 - (h) kidnaping, MCL 750.349;
 - (i) first-degree criminal sexual conduct, MCL 750.520b;
 - (j) armed robbery, MCL 750.529;
 - (k) carjacking, MCL 750.529a;
 - (l) robbery of a bank, safe, or vault, MCL 750.531;
 - (m) possession, manufacture, or delivery of, or possession with intent to manufacture or deliver, 650 grams or more of any schedule 1 or 2 controlled substance, 333.7401, 333.7403;
 - (n) assault with intent to do great bodily harm less than murder, MCL 750.84, if armed with a dangerous weapon as defined by MCL 712A.2d(9)(b);
 - (o) first-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon as defined by MCL 712A.2d(9)(b);
 - (p) escape or attempted escape from a medium security or high security facility operated by the Family Independence Agency or a high-security facility operated by a private agency under contract with the Family Independence Agency, MCL

750.186a;

- (q) any lesser-included offense of an offense described in subrules (a) - (p), if the petition alleged that the juvenile committed an offense described in subrules (a) - (p); or
 - (r) any offense arising out of the same transaction as an offense described in subrules (a) - (p), if the petition alleged that the juvenile committed an offense described in subrules (a) - (p).
- (9) "Tried in the same manner as an adult" means a trial in which the juvenile is afforded all the legal and procedural protections that an adult would be given if charged with the same offense in a court of general criminal jurisdiction.
- (E) Minor Personal Protection Order Proceedings. When used in minor personal protection order proceedings, unless the context otherwise indicates:
- (1) "Minor personal protection order" means a personal protection order issued by a court against a minor under jurisdiction granted by MCL 712A.2(h).
 - (2) "Original petitioner" means the person who originally petitioned for the minor personal protection order.
 - (3) "Prosecutor" or "prosecuting attorney" means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

NOTE: MCR 3.903 CORRESPONDS TO FORMER RULE 5.903. THE AMENDMENTS ADD SEVERAL NEW DEFINITIONS, INCLUDING DEFINITIONS OF "CASE" [SUBRULE (A)(1)]; "FILE" [SUBRULE (A)(8)]; "GUARDIAN" [SUBRULE (A)(11)]; "LEGAL CUSTODIAN" [SUBRULE (A)(13)]; "LEGALLY ADMISSIBLE EVIDENCE" [SUBRULE (A)(14)]; "PUTATIVE FATHER" [SUBRULE (A)(23)]; "CONTRARY TO THE WELFARE OF THE CHILD" [SUBRULE (C)(3)]; "LAWYER-GUARDIAN AD LITEM" [SUBRULE (C)(5)]; "NON-PARENT ADULT" [SUBRULE (C)(6)]; "PROSECUTOR" [SUBRULE (E)(3)].

OTHER PROVISIONS ARE MODIFIED. AMONG THOSE CHANGES ARE THE FOLLOWING:

THE SEPARATE DEFINITION OF "CHILD BORN OUT OF WEDLOCK" IN FORMER RULE 5.903 (A)(1) IS DELETED, WITH THE SUBSTANCE OF THAT PROVISION BEING INCLUDED IN SUBRULE (A)(7).

THE DEFINITION OF "CONFIDENTIAL FILE" IS REWRITTEN TO INCLUDE THE CONCEPT OF THE "SOCIAL FILE." SEE SUBRULE (A)(3).

IN SUBRULE (A)(4), AND ELSEWHERE THROUGHOUT THE RULES, REFERENCES TO “JUVENILE COURT” ARE ELIMINATED. COMPARE FORMER RULE 5.903(A)(8).

SUBRULE (A)(5) ADDS A REFERENCE TO THE PROVISION DEFINING AN OFFENSE BY A JUVENILE.

IN SUBRULE (A)(7), CHANGES ARE MADE IN THE DEFINITION OF “FATHER” TO CONFORM TO STATUTORY AMENDMENTS. SEE MCL 333.2824, 333.21532, 722.1001 *ET SEQ.* FORMER RULE 5.903(A)(4)(c) IS DELETED. WHILE THE PRESENCE OF A MAN’S NAME ON THE MINOR’S BIRTH CERTIFICATE IS A GOOD INDICATION THAT HE IS THE FATHER, IT DOES NOT IN ITSELF CREATE PARENTAL RIGHTS, WHICH ARISE FROM THE OTHER LISTED CIRCUMSTANCES, SUCH AS MARRIAGE TO THE MOTHER, ACKNOWLEDGMENT OF PARENTAGE UNDER THE 722.1001 *ET SEQ.*, OR COURT ORDER.

IN SUBRULE (A)(17), THE DEFINITION OF “PARENT” IS SHORTENED TO INCLUDE ONLY THE MOTHER AND FATHER OF THE CHILD. IN A NUMBER OF OTHER RULES, “PARENT, GUARDIAN, OR LEGAL CUSTODIAN” IS USED WHERE THE FORMER RULES USED “PARENT.”

THE DEFINITION OF “PARTY” IN SUBRULE (A)(18) IS MODIFIED TO INCLUDE ALL RESPONDENTS, WHICH WOULD INCLUDE NONPARENT ADULTS. SEE MCL 712A.2(b)(2); 712A.6b.

IN SUBRULE (B)(1), THE DEFINITION OF “DETENTION” IS LIMITED TO COURT ORDERED REMOVAL OF THE JUVENILE FROM THE PARENT OR CUSTODIAN.

THE DEFINITION OF “MAJOR OFFENSE” IS DELETED FROM FORMER RULE 5.903(B)(3). THE SUBSTANCE OF THE DEFINITION IS INCLUDED IN MCR 3.935(D)(1)(b), THE ONLY PLACE WHERE THAT TERM WAS USED.

THE DEFINITION OF “REPORTABLE JUVENILE OFFENSE” IN FORMER MCR 5.903(B)(6) IS DELETED IN LIGHT OF STATUTORY CHANGES. SEE MCL 28.243, AS AMENDED BY 2001 PA 187. RELATED CHANGES ARE MADE ELSEWHERE IN THE RULES IN WHICH THAT TERM WAS USED. SEE MCR 3.903(A)(3) , 3.925(F), 3.936, AND 3.945(B)(1).

THE DEFINITION OF “CONCERNED PERSON” IS DELETED FROM FORMER RULE 5.903(C)(3). THAT TERM IS USED IN ONLY ONE OTHER PLACE IN THE RULES, WHERE IT IS SEPARATELY DEFINED. SEE MCR 3.977A(2)(d).

ADDITIONAL DETAILS ARE ADDED TO THE DEFINITION OF “FOSTER CARE” IN SUBRULE (C)(4).

THE DEFINITION OF “PLACEMENT” IN SUBRULE (C)(8) IS MODIFIED SO AS NOT TO

LIMIT THE TERM TO REMOVAL FROM THE PARENTAL HOME.

Rule 3.911 Jury

- (A) Right. The right to a jury in a juvenile proceeding exists only at the trial.
- (B) Jury Demand. A party who is entitled to a trial by jury may demand a jury by filing a written demand with the court within:
 - (1) 14 days after the court gives notice of the right to jury trial, or
 - (2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial.

The court may excuse a late filing in the interest of justice.

- (C) Jury Procedure. Jury procedure in juvenile cases is governed by MCR 2.508-2.516, except as provided in this subrule.
 - (1) In a delinquency proceeding,
 - (a) each party is entitled to 5 peremptory challenges, and
 - (b) the verdict must be unanimous.
 - (2) In a child protective proceeding,
 - (a) each party is entitled to 5 peremptory challenges, with the child considered a separate party, and
 - (b) a verdict in a case tried by 6 jurors will be received when 5 jurors agree.
 - (3) Two or more parties on the same side, other than a child in a child protective proceeding, are considered a single party for the purpose of peremptory challenges.
 - (a) When two or more parties are aligned on the same side and have adverse interests, the court shall allow each such party represented by a different attorney 3 peremptory challenges.
 - (b) When multiple parties are allowed more than 5 peremptory challenges under this subrule, the court may allow the opposite side a total number of peremptory challenges not to exceed the number allowed to the multiple parties.

(4) In a designated case, jury procedure is governed by MCR 6.401-6.420.

NOTE: MCR 3.911 CORRESPONDS TO FORMER RULE 5.911. THE TIME FOR MAKING A JURY DEMAND IS INCREASED FROM 7 DAYS BEFORE TRIAL TO 21 DAYS. SEE SUBRULE (B)(2).

Rule 3.912 Judge

(A) Judge Required. A judge must preside at:

- (1) a jury trial;
- (2) a waiver proceeding under MCR 3.950;
- (3) the preliminary examination, trial, and sentencing in a designated case;
- (4) a proceeding on the issuance, modification, or termination of a minor personal protection order.

(B) Right; Demand. The parties have the right to a judge at a hearing on the formal calendar. A party may demand that a judge rather than a referee preside at a nonjury trial by filing a written demand with the court within:

- (1) 14 days after the court gives notice of the right to a judge, or
- (2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial.

The court may excuse a late filing in the interest of justice.

(C) Designated Cases.

- (1) The judge who presides at the preliminary examination may not preside at the trial of the same designated case unless a determination of probable cause is waived. The judge who presides at a preliminary examination may accept a plea in the designated case.
- (2) The juvenile has the right to demand that the same judge who accepted the plea or presided at the trial of a designated case preside at sentencing or delayed imposition of sentence, but not at a juvenile disposition of the designated case.

(D) Disqualification of Judge. The disqualification of a judge is governed by MCR 2.003.

NOTE: MCR 3.912 CORRESPONDS TO FORMER RULE 5.912. THE TIME FOR MAKING A JUDGE DEMAND IS INCREASED FROM 7 DAYS BEFORE TRIAL TO 21 DAYS. SEE SUBRULE (B)(2). IN ADDITION, THERE IS SOME REORGANIZATION OF THE PROVISIONS.

Rule 3.913 Referees

(A) Assignment of Matters to Referees.

(1) General. Subject to the limitations in subrule (A)(2), the court may assign a referee to conduct a preliminary inquiry or to preside at a hearing other than those specified in MCR 3.912(A) and to make recommended findings and conclusions.

(2) Attorney and Nonattorney Referees.

(a) Delinquency Proceedings. Except as otherwise provided by MCL 712A.10, only a person licensed to practice law in Michigan may serve as a referee at a delinquency proceeding other than a preliminary inquiry or preliminary hearing, if the juvenile is before the court under MCL 712A.2(a)(1).

(b) Child Protective Proceedings. Only a person licensed to practice law in Michigan may serve as a referee at a child protective proceeding other than a preliminary inquiry, preliminary hearing, a progress review under MCR 3.974(A), or an emergency removal hearing under MCR 3.974(B).

(c) Designated Cases. Only a referee licensed to practice law in Michigan may preside at a hearing to designate a case or to amend a petition to designate a case and to make recommended findings and conclusions.

(d) Minor Personal Protection Actions. A nonattorney referee may preside at a preliminary hearing for enforcement of a minor personal protection order. Only a referee licensed to practice law in Michigan may preside at any other hearing for the enforcement of a minor personal protection order and make recommended findings and conclusions.

(B) Duration of Assignment. Unless a party has demanded trial by jury or by a judge pursuant to MCR 3.911 or 3.912, a referee may conduct the trial and further proceedings through disposition.

(C) Advice of Right to Review of Referee's Recommendations. During a hearing held by a referee, the referee must inform the parties of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 3.991(B).

NOTE: MCR 3.913 CORRESPONDS TO FORMER RULE 5.913. THE MAIN CHANGES ARE IN ORGANIZATION.

Rule 3.914 Prosecuting Attorney

- (A) General. On request of the court, the prosecuting attorney shall review the petition for legal sufficiency and shall appear at any child protective proceeding or any delinquency proceeding.
- (B) Delinquency Proceedings.
 - (1) Petition Approval. Only the prosecuting attorney may request the court to take jurisdiction of a juvenile under MCL 712A.2(a)(1).
 - (2) Appearance. The prosecuting attorney shall participate in every delinquency proceeding under MCL 712A.2(a)(1) that requires a hearing and the taking of testimony.
- (C) Child Protective Proceedings.
 - (1) Legal Consultant to Agency. On request of the Michigan Family Independence Agency or of an agent under contract with the agency, the prosecuting attorney shall serve as a legal consultant to the agency or agent at all stages of a child protective proceeding.
 - (2) Retention of Counsel. In a child protective proceeding, the agency may retain legal representation of its choice when the prosecuting attorney does not appear on behalf of the agency or an agent under contract with the agency.
- (D) Designated Proceedings.
 - (1) Specified Juvenile Violation. In a case in which the petition alleges a specified juvenile violation, only the prosecuting attorney may designate the case, or request leave to amend a petition to designate the case, for trial of the juvenile in the same manner as an adult.
 - (2) Other Offenses. In a case in which the petition alleges an offense other than the specified juvenile violation, only the prosecuting attorney may request the court to designate the case for trial of the juvenile in the same manner as an adult.
- (E) Minor Personal Protection Orders. The prosecuting attorney shall prosecute criminal contempt proceedings as provided in MCR 3.987(B) .

NOTE: MCR 3.914 CORRESPONDS TO FORMER RULE 5.914.

IN SUBRULE (C)(1), REFERENCES TO THE DEPARTMENT OF SOCIAL SERVICES ARE CHANGED TO THE FAMILY INDEPENDENCE AGENCY.

NEW SUBRULE (E) INCORPORATES THE PROVISIONS OF MCR 3.987(B) REGARDING THE ROLE OF THE PROSECUTING ATTORNEY IN PERSONAL PROTECTION ORDER CASES INVOLVING MINOR RESPONDENTS. SEE ALSO MCL 764.15b(7).

Rule 3.915 Assistance of Attorney

(A) Delinquency Proceedings.

- (1) Advice. If the juvenile is not represented by an attorney, the court shall advise the juvenile of the right to the assistance of an attorney at each stage of the proceedings on the formal calendar, including trial, plea of admission, and disposition.
- (2) Appointment of an Attorney. The court shall appoint an attorney to represent the juvenile in a delinquency proceeding if:
 - (a) the parent, guardian, or legal custodian refuses or fails to appear and participate in the proceedings;
 - (b) the parent, guardian, or legal custodian is the complainant or victim;
 - (c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney, and the juvenile does not waive an attorney;
 - (d) those responsible for the support of the juvenile refuse or neglect to retain an attorney for the juvenile, and the juvenile does not waive an attorney; or
 - (e) the court determines that the best interests of the juvenile or the public require appointment.
- (3) Waiver of Attorney. The juvenile may waive the right to the assistance of an attorney except where a parent, guardian, legal custodian, or guardian ad litem objects or when the appointment is based on subrule (A)(2)(e). The waiver by a juvenile must be made in open court to the judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made.

(B) Child Protective Proceedings.

- (1) Respondent.

- (a) At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that
 - (i) the respondent has the right to a court appointed attorney if the respondent is financially unable to retain an attorney, and,
 - (ii) if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing.
- (b) The court shall appoint an attorney to represent the respondent at any hearing conducted pursuant to these rules if
 - (i) the respondent requests appointment of an attorney, and
 - (ii) it appears to the court, following an examination of the record, through written financial statements, or otherwise, that the respondent is financially unable to retain an attorney.
- (c) The respondent may waive the right to the assistance of an attorney, except that the court shall not accept the waiver by a respondent who is a minor when a parent, guardian, legal custodian, or guardian ad litem objects to the waiver.

(2) Child.

- (a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d.
- (b) If a conflict arises between the lawyer-guardian ad litem and the child regarding the child's best interests, the court may appoint an attorney to represent the child's stated interests.

(C) Appearance. The appearance of an attorney is governed by MCR 2.117(B).

(D) Duration. An attorney retained by a party may withdraw only on order of the court. An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court.

(E) Costs. When an attorney is appointed for a party under this rule, the court may enter an order assessing costs of the representation against the party or against a person responsible for the support of that party, which order may be enforced as provided by law.

NOTE: MCR 3.915 CORRESPONDS TO FORMER RULE 5.915. SUBRULE (B)(2) IS MODIFIED IN LIGHT OF THE STATUTE CREATING THE LAWYER-GUARDIAN AD LITEM ROLE. SEE MCL 712A.17c(7), 712A.17d.

Rule 3.916 Guardian Ad Litem

- (A) General. The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it.
- (B) Appearance. The appearance of a guardian ad litem must be in writing and in a manner and form designated by the court. The appearance shall contain a statement regarding the existence of any interest that the guardian ad litem holds in relation to the minor, the minor's family, or any other person in the proceeding before the court or in other matters.
- (C) Access to Information. The appearance entitles the guardian ad litem to be furnished copies of all petitions, motions, and orders filed or entered, and to consult with the attorney of the party for whom the guardian ad litem has been appointed.
- (D) Costs. The court may assess the cost of providing a guardian ad litem against the party or a person responsible for the support of the party, and may enforce the order of reimbursement as provided by law.

NOTE: MCR 3.916 CORRESPONDS TO FORMER RULE 5.916. MINOR CHANGES ONLY.

Rule 3.917 Court Appointed Special Advocate

- (A) General. The court may, upon entry of an appropriate order, appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division.
- (B) Qualifications. All court appointed special advocates shall receive appropriate screening,
- (C) Duties. Each court appointed special advocate shall maintain regular contact with the child, investigate the background of the case, gather information regarding the child's status, provide written reports to the court and all parties before each hearing, and appear at all hearings when required by the court.
- (D) Term of Appointment. A court appointed special advocate shall serve until discharged by the court.
- (E) Access to Information. Upon appointment by the court, the special advocate may be given

access to all information, confidential or otherwise, contained in the court file if the court so orders. The special advocate shall consult with the child's lawyer-guardian ad litem.

NOTE: MCR 3.917 IS A NEW RULE DEFINING THE ROLE OF COURT APPOINTED SPECIAL ADVOCATES, WHICH SOME COURTS HAVE APPOINTED IN INDIVIDUAL CASES.

Rule 3.920 Service of Process

(A) General.

- (1) Unless a party must be summoned as provided in subrule (B), a party shall be given notice of a juvenile proceeding in any manner authorized by the rules in this subchapter.
- (2) MCR 2.004 applies in juvenile proceedings involving incarcerated parties.

(B) Summons.

- (1) In General. A summons may be issued and served on a party before any juvenile proceeding.
- (2) When Required. Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:
 - (a) In a delinquency proceeding, a summons must be served on the parent or parents, guardian, or legal custodian having physical custody of the juvenile, directing them to appear with the juvenile for trial. The juvenile must also be served with a summons to appear for trial. A parent without physical custody must be notified by service as provided in subrule (C), unless the whereabouts of the parent remain unknown after a diligent inquiry.
 - (b) In a child protective proceeding, a summons must be served on the respondent. A summons may be served on a person having physical custody of the child directing such person to appear with the child for hearing. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing in the manner provided by subrule (C).
 - (c) In a personal protection order enforcement proceeding involving a minor respondent, a summons must be served on the minor. A summons must also be served on the parent or parents, guardian, or legal custodian, unless their whereabouts remain unknown after a diligent inquiry.
- (3) Content. The summons must direct the person to whom it is addressed to appear at a

time and place specified by the court and must:

- (a) identify the nature of hearing;
- (b) explain the right to an attorney and the right to trial by judge or jury, including, where appropriate, that there is no right to a jury at a termination hearing;
- (c) if the summons is for a child protective proceeding, include a prominent notice that the hearings could result in termination of parental rights; and
- (d) have a copy of the petition attached.

(4) Manner of Serving Summons.

- (a) Except as provided in subrule (B)(4)(b), a summons required under subrule (B)(2) must be served by delivering the summons to the party personally.
- (b) If the court finds, on the basis of testimony or a motion and affidavit, that personal service of the summons is impracticable or cannot be achieved, the court may by ex parte order direct that it be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.
- (c) If personal service of a summons is not required, the court may direct that it be served in a manner reasonably calculated to provide notice.

(5) Time of Service.

- (a) A summons shall be personally served at least:
 - (i) 14 days before hearing on a petition that seeks to terminate parental rights or a permanency planning hearing,
 - (ii) 7 days before trial or a child protective dispositional review hearing, or
 - (iii) 3 days before any other hearing.
- (b) If the summons is served by registered mail, it must be sent at least 7 days earlier than subrule (a) requires for personal service of a summons if the party to be served resides in Michigan, or 14 days earlier than required by subrule (a) if the party to be served resides outside Michigan.
- (c) If service is by publication, the published notice must appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The published notice need not include the petition itself. The notice must be published at least once 21 days before a hearing specified in subrule (a)(i),

14 days before trial or a hearing specified in subrule (a)(ii), or 7 days before any other hearing.

(C) Notice of Hearing.

- (1) General. Notice of a hearing must be given in writing or on the record at least 7 days before the hearing except as provided in subrules (C)(2) and (C)(3), or as otherwise provided in the rules.
- (2) Preliminary Hearing; Emergency Removal Hearing.
 - (a) When a juvenile is detained, notice of the preliminary hearing must be given to the juvenile and to the parent of the juvenile as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.
 - (b) When a child is placed outside the home, notice of the preliminary hearing or an emergency removal hearing under MCR 3.974(B)(3) must be given to the parent of the child as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.
- (3) Permanency Planning Hearing; Termination Proceedings.
 - (a) Notice of a permanency planning hearing must be given in writing at least 14 days before the hearing.
 - (b) Notice of a hearing on a petition requesting termination of parental rights in a child protective proceeding must be given in writing at least 14 days before the hearing.
- (4) Failure to Appear. When a party fails to appear in response to a notice of hearing, the court may order the party's appearance by summons or subpoena.

(D) Subpoenas.

- (1) The attorney for a party or the court on its own motion may cause a subpoena to be served upon a person whose testimony or appearance is desired.
- (2) It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.
- (3) Except as otherwise stated in this subrule, service of a subpoena is governed by MCR 2.506.

(E) Waiver of Notice and Service. A person may waive notice of hearing or service of process. The waiver shall be in writing. When a party waives service of a summons required by subrule (B), the party must be provided the advice required by subrule (B)(3).

- (F) Subsequent Notices. After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party as provided in subrule (C), except that a summons must be served for trial or termination hearing as provided in subrule (B).
- (G) Notice Defects. The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on the record. If a party appears or participates without an attorney, the court shall advise the party that the appearance and participation waives notice defects and of the party's right to seek an attorney.
- (H) Proof of Service.
- (1) Summons. Proof of service of a summons must be made in the manner provided in MCR 2.104(A).
 - (2) Other Papers. Proof of service of other papers permitted or required to be served under these rules must be made in the manner provided in MCR 2.107(D).
 - (3) Publication. If the manner of service used involves publication, proof of service must be made in the manner provided in MCR 2.106(G)(1), and (G)(3) if the publication is accompanied by a mailing.
 - (4) Content. The proof of service must identify the papers served.
 - (5) Failure to File. Failure to file proof of service does not affect the validity of the service.

NOTE: MCR 3.920 CORRESPONDS TO FORMER RULE 5.920.

NEW SUBRULE (A)(2) CROSS-REFERENCES THE RECENTLY ADOPTED NOTICE PROVISION APPLICABLE TO INCARCERATED PARTIES. SEE MCR 2.004.

THE PROVISIONS ON SERVICE OF THE SUMMONS IN DELINQUENCY AND CHILD PROTECTIVE PROCEEDINGS ARE REWRITTEN. A NEW PROVISION ON THE SERVICE OF A SUMMONS IN PERSONAL PROTECTION ORDER CASES IS ADDED IN SUBRULE (B)(2)(c).

THE PROVISIONS OF SUBRULE (B)(4) COVERING SUBSTITUTE SERVICE ARE REVISED, DELETING REFERENCES TO REGISTERED OR CERTIFIED MAIL AND ALLOWING THE COURT TO DIRECT SERVICE IN ANY MANNER REASONABLY CALCULATED TO GIVE NOTICE.

SUBRULE (F), REGARDING SUBSEQUENT NOTICES, IS MODIFIED IN LIGHT OF *IN RE ATKINS*, 237 MICH APP 249 (1999).

NEW SUBRULE (G) COVERS WAIVER OF NOTICE DEFECTS BY APPEARANCE AT A HEARING.

NEW SUBRULE (H) ADDS PROVISIONS GOVERNING PROOF OF SERVICE.

Rule 3.921 Persons Entitled to Notice

(A) Delinquency Proceedings.

- (1) General. In a delinquency proceeding, the court shall direct that the following persons be notified of each hearing except as provided in subrule (A)(3):
 - (a) the juvenile,
 - (b) the custodial parents, guardian, or legal custodian of the juvenile,
 - (c) the noncustodial parent who has requested notice at a hearing or in writing,
 - (d) the guardian ad litem or lawyer-guardian ad litem of a juvenile appointed pursuant to these rules,
 - (e) the attorney retained or appointed to represent the juvenile, and
 - (f) the prosecuting attorney.
- (2) Notice to the Petitioner. The petitioner must be notified of the first hearing on the petition.
- (3) Parent Without Physical Custody. A parent of the minor whose parental rights over the minor have not been terminated at the time the minor comes to court, must be notified of the first hearing on the formal calendar, unless the whereabouts of the parent are unknown.

(B) Protective Proceedings.

- (1) General. In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:
 - (a) the respondent,
 - (b) the attorney for the respondent,
 - (c) the lawyer-guardian ad litem for the child,

- (d) subject to subrule (C), the parents, guardian, or legal custodian, if any, other than the respondent,
 - (e) the petitioner,
 - (f) a party's guardian ad litem appointed pursuant to these rules, and
 - (g) any other person the court may direct to be notified.
- (2) Dispositional Review Hearings and Permanency Planning Hearings. Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:
- (a) the agency responsible for the care and supervision of the child,
 - (b) the person or institution having court-ordered custody of the child,
 - (c) the parents of the child, subject to subrule (C), and the attorney for the respondent parent, unless parental rights have been terminated,
 - (d) the guardian or legal custodian of the child, if any,
 - (e) the guardian ad litem for the child,
 - (f) the lawyer-guardian ad litem for the child,
 - (g) the attorneys for each party,
 - (h) the prosecuting attorney if the prosecuting attorney has appeared in the case,
 - (i) the child, if 11 years old or older,
 - (j) any tribal leader, if there is an Indian tribe affiliation, and
 - (k) any other person the court may direct to be notified.
- (3) Termination of Parental Rights. Written notice of a hearing to determine if the parental rights to a child shall be terminated must be given to those appropriate persons or entities listed in subrule (B)(2).
- (C) Putative Fathers. If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.
- (1) The court may take initial testimony on the tentative identity and address of the natural

father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in any manner reasonably calculated to provide notice to the putative father, including publication if his whereabouts remain unknown after diligent inquiry. Any notice by publication must not include the name of the putative father. If the court finds that the identity of the natural father is unknown, the court must direct that the unknown father be given notice by publication. The notice must include the following information:

- (a) if known, the name of the child, the name of the child's mother, and the date and place of birth of the child;
 - (b) that a petition has been filed with the court;
 - (c) the time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor; and
 - (d) a statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.
- (2) After notice to the putative father as provided in subrule (C)(1), the court may conduct a hearing and determine, as appropriate, that:
- (a) the putative father has been served in a manner that the court finds to be reasonably calculated to provide notice to the putative father.
 - (b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.
 - (c) there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with subrule (C).
 - (d) after diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice and without appointing an attorney for the unidentified person.
- (3) The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney if
- (a) he fails to appear after proper notice, or
 - (b) he appears, but fails to establish paternity within the time set by the court.

- (D) Failure to Appear; Notice by Publication. When persons whose whereabouts are unknown fail to appear in response to notice by publication or otherwise, the court need not give further notice by publication of subsequent hearings, except a hearing on the termination of parental rights.

NOTE: MCR 3.921 CORRESPONDS TO FORMER RULE 5.921.

IN SUBRULE (A), THE PROVISIONS REGARDING PERSONS TO BE NOTIFIED IN DELINQUENCY PROCEEDINGS ARE REORGANIZED, AND THE PROSECUTING ATTORNEY IS ADDED.

THE CHANGES IN SUBRULE (B) REGARDING CHILD PROTECTIVE PROCEEDINGS ARE LARGELY IN TERMINOLOGY, CONSISTENT WITH OTHER PROPOSED CHANGES.

THE PROVISIONS REGARDING NOTICE TO PUTATIVE FATHERS IN SUBRULE (C) ARE REWRITTEN.

Rule 3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

(A) Discovery.

- (1) The following materials are discoverable as of right in all proceedings provided they are requested no later than 21 days before trial unless the interests of justice otherwise dictate:
 - (a) all written or recorded statements and notes of statements made by the juvenile or respondent that are in possession or control of petitioner or a law enforcement agency, including oral statements if they have been reduced to writing;
 - (b) all written or recorded nonconfidential statements made by any person with knowledge of the events in possession or control of petitioner or a law enforcement agency, including police reports;
 - (c) the names of prospective witnesses;
 - (d) a list of all prospective exhibits;
 - (e) a list of all physical or tangible objects that are prospective evidence that are in the possession or control of petitioner or a law enforcement agency;
 - (f) the results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts, that are relevant to the subject matter of the

petition;

- (g) the results of any lineups or showups, including written reports or lineup sheets; and
 - (h) all search warrants issued in connection with the matter, including applications for such warrants, affidavits, and returns or inventories.
- (2) On motion of a party, the court may permit discovery of any other materials and evidence, including untimely requested materials and evidence that would have been discoverable of right under subrule (A)(1) if timely requested. Absent manifest injustice, no motion for discovery will be granted unless the moving party has requested and has not been provided the materials or evidence sought through an order of discovery.
 - (3) Depositions may only be taken as authorized by the court.
 - (4) Failure to comply with subrules (1) and (2) may result in such sanctions, as applicable, as set forth in MCR 2.313.

(B) Notice of Defenses; Rebuttal.

- (1) Within 21 days after the juvenile has been given notice of the date of trial, but no later than 7 days before the trial date, the juvenile or the juvenile's attorney must file a written notice with the court and prosecuting attorney of the intent to rely on a defense of alibi or insanity. The notice shall include a list of the names and addresses of defense witnesses.
- (2) Within 7 days after receipt of notice, but no later than 2 days before the trial date, the prosecutor shall provide written notice to the court and defense of an intent to offer rebuttal to the above-listed defenses. The notice shall include names and addresses of rebuttal witnesses.
- (3) Failure to comply with subrules (1) and (2) may result in the sanctions set forth in MCL 768.21.

(C) Motion Practice. Motion practice in juvenile proceedings is governed by MCR 2.119.

(D) Pretrial Conference. The court may direct the parties to appear at a pretrial conference. The scope and effect of a pretrial conference are governed by MCR 2.401, except as otherwise provided in or inconsistent with the rules of this subchapter.

(E) Notice of Intent.

- (1) Within 21 days after the parties have been given notice of the date of trial, but no later

than 7 days before the trial date, the proponent must file with the court, and serve all parties, written notice of the intent to:

- (a) use a support person, including the identity of the support person, the relationship to the witness, and the anticipated location of the support person during the hearing.
 - (b) request special arrangements for a closed courtroom or for restricting the view of the respondent/defendant from the witness or other special arrangements allowed under law and ordered by the court.
 - (c) use a videotape deposition as permitted by law.
 - (d) admit out-of-court hearsay statements under MCR 3.972(C)(2), including the identity of the persons to whom a statement was made, the circumstances leading to the statement, and the statement to be admitted.
- (2) Within 7 days after receipt or notice, but no later than 2 days before the trial date, the nonproponent parties must provide written notice to the court of an intent to offer rebuttal testimony or evidence in opposition to the request and must include the identity of the witnesses to be called.
- (3) The court may shorten the time periods provided in subrule (E) if good cause is shown.

NOTE: MCR 3.922 CORRESPONDS TO FORMER RULE 5.922.

SEVERAL CHANGES ARE MADE IN THE DISCOVERY PROVISIONS.

IN SUBRULE (A)(1), THE LANGUAGE REGARDING LISTING OF EXHIBITS, TANGIBLE OBJECTS, AND THE RESULTS OF TESTS OR EXPERIMENTS IS MODIFIED.

NEW SUBRULE (A)(3) EXPRESSLY PROVIDES THAT DEPOSITIONS MAY BE TAKEN ONLY WITH COURT AUTHORIZATION.

NEW SUBRULE (A)(4) PROVIDES THAT FAILURE TO COMPLY WITH DISCOVERY PROVISIONS SUBJECTS A PARTY TO MCR 2.313 SANCTIONS.

IN SUBRULE (B)(1), THE REFERENCES TO THE DEFENSES OF DIMINISHED CAPACITY AND MENTAL ILLNESS NEGATING AN ELEMENT OF THE ALLEGED OFFENSE ARE DELETED IN LIGHT OF *PEOPLE V CARPENTER*, 464 MICH 223 (2001).

IN SUBRULE (C), THE SPECIAL PROVISION ON THE TIME FOR FILING MOTIONS TO SUPPRESS IS DELETED.

A NEW SUBRULE (E) IS ADDED REQUIRING PARTIES TO GIVE NOTICE OF INTENT TO REQUEST CERTAIN PROCEDURES, INCLUDING USE OF A “SUPPORT PERSON,” SPECIAL ARRANGEMENTS FOR A CLOSED COURTROOM OR RESTRICTED VIEW OF A WITNESS, USE OF A VIDEO-TAPED DEPOSITION, OR ADMISSION OF HEARSAY. SEE MCL 712A.17b; MCR 3.972(C)(2).

Rule 3.923 Miscellaneous Procedures

- (A) Additional Evidence. If at any time the court believes that the evidence has not been fully developed, it may:
- (1) examine a witness,
 - (2) call a witness, or
 - (3) adjourn the matter before the court, and
 - (a) cause service of process on additional witnesses, or
 - (b) order production of other evidence.
- (B) Examination or Evaluation. The court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist.
- (C) Fingerprinting and Photographing. A juvenile must be fingerprinted when required by law. The court may permit fingerprinting or photographing, or both, of a minor concerning whom a petition has been filed. Fingerprints and photographs must be placed in the confidential files, capable of being located and destroyed on court order.
- (D) Lineup. If a complaint or petition is filed against a juvenile alleging violation of a criminal law or ordinance, the court may, at the request of the prosecuting attorney, order the juvenile to appear at a place and time designated by the court for identification by another person, including a corporeal lineup pursuant to MCL 712A.32. If the court orders the juvenile to appear for such an identification procedure, the court must notify the juvenile and the juvenile's parent, guardian or legal custodian that the juvenile has the right to consult with an attorney and have an attorney present during the identification procedure and that if the juvenile and the juvenile's parent, guardian or legal custodian cannot afford an attorney, the court will appoint an attorney for the juvenile if requested on the record or in writing by the juvenile or the juvenile's parent, guardian or legal custodian.
- (E) Electronic Equipment; Support Person. The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions,

anatomical dolls, or support persons, and may take other measures to protect the child witness as authorized by MCL 712A.17b.

- (F) Impartial Questioner. The court may appoint an impartial person to address questions to a child witness at a hearing as the court directs.
- (G) Adjournments. Adjournments of trials or hearings in child protective proceedings should be granted only
 - (1) for good cause,
 - (2) after taking into consideration the best interests of the child, and
 - (3) for as short a period of time as necessary.

NOTE: MCR 3.923 CORRESPONDS TO FORMER RULE 5.923.

SUBRULE (C) SPECIFICALLY PROVIDES THAT FINGERPRINTING MUST BE DONE AS REQUIRED BY LAW. SEE, E.G., MCL 712A.11(5) AND 712A.18(10). IN ADDITION, IT ADJUSTS THE LANGUAGE GIVING THE COURT DISCRETION TO REQUIRE FINGERPRINTING AND PHOTOGRAPHING OF A MINOR, APPLYING THAT PRINCIPLE TO JUVENILES CONCERNING WHOM A PETITION HAS BEEN FILED, RATHER THAN TO THOSE WHO ARE IN COURT CUSTODY, AS IN FORMER RULE 5.923(C).

FORMER MCR 5.923(F) ALLOWED THE JUDGE TO APPOINT A PSYCHOLOGIST OR PSYCHIATRIST TO QUESTION A CHILD WITNESS. MCR 3.923(F) ALLOWS ANYONE TO BE DESIGNATED AS SUCH A QUESTIONER.

THE ADJOURNMENT PROVISIONS OF SUBRULE (G) ARE SIMPLIFIED, GIVING THE JUDGE MORE FLEXIBILITY, AND DELETING THE MOTION REQUIREMENT.

Rule 3.924 Information Furnished on Request by Court

Persons or agencies providing testimony, reports, or other information at the request of the court, including otherwise confidential information, records, or reports that are relevant and material to the proceedings following authorization of a petition, are immune from any subsequent legal action with respect to furnishing the information to the court.

NOTE: MCR 3.924 CORRESPONDS TO FORMER RULE 5.924. THE PROVISION ON IMMUNITY FOR PERSONS PROVIDING INFORMATION TO THE COURT IS MODIFIED

Rule 3.925 Open Proceedings; Judgments and Orders; Records Confidentiality; Destruction of Court Files; Setting Aside Adjudications

(A) Open Proceedings.

- (1) General. Except as provided in subrule (A)(2), juvenile proceedings on the formal calendar and preliminary hearings shall be open to the public.
- (2) Closed Proceedings; Criteria. The court, on motion of a party or a victim, may close the proceedings to the public during the testimony of a child or during the testimony of the victim to protect the welfare of either. In making such a determination, the court shall consider the nature of the proceedings; the age, maturity, and preference of the witness; and, if the witness is a child, the preference of a parent, guardian, or legal custodian that the proceedings be open or closed. The court may not close the proceedings to the public during the testimony of the juvenile if jurisdiction is requested under MCL 712A.2(a)(1).

(B) Record of Proceedings. A record of all hearings must be made. All proceedings on the formal calendar must be recorded by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. A plea of admission or no contest, including any agreement with or objection to the plea, must be recorded.

(C) Judgments and Orders. The form and signing of judgments are governed by MCR 2.602(A)(1) and (2). Judgments and orders may be served on a person by first-class mail to the person's last known address.

(D) Public Access to Records; Confidential File.

- (1) General. Records of the juvenile cases, other than confidential files, must be open to the general public.
- (2) Confidential Files. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any restriction imposed by state or federal law.

(E) Destruction of Court Files and Records. This subrule governs the destruction of court files and records.

- (1) Destruction Generally; Effect. The court may at any time for good cause destroy its

own files and records pertaining to an offense by or against a minor, other than an adjudicated offense described in MCL 712A.18e(2), except that the register of actions must not be destroyed. Destruction of a file does not negate, rescind, or set aside an adjudication.

(2) Delinquency Files and Records.

- (a) The court must destroy the diversion record of a juvenile within 28 days after the juvenile becomes 17 years of age.
- (b) The court must destroy all files of matters heard on the consent calendar within 28 days after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later, unless the juvenile subsequently comes within the jurisdiction of the court on the formal calendar. If the case is transferred to the consent calendar and a register of actions exists, the register of actions must be maintained as a nonpublic record.
- (c) Except as provided by subrules (a) and (b), the court must destroy the files and records pertaining to a person's juvenile offenses, other than any adjudicated offense described in MCL 712A.18e(2), when the person becomes 30 years old.
- (d) If the court destroys its files regarding a juvenile proceeding on the formal calendar, it shall retain the register of actions, and, if the information is not included in the register of actions, whether the juvenile was represented by an attorney or waived representation.

(3) Child Protective Files and Records.

- (a) The court, for any reason, may destroy child protective proceeding files and records pertaining to a child, other than orders terminating parental rights, 25 years after the jurisdiction over the child ends, except that where records on more than one child in a family are retained in the same file, destruction is not allowed until 25 years after jurisdiction over the last child ends.
- (b) All orders terminating parental rights to a child must be kept as a permanent record of the court.

(F) Setting Aside Adjudications and Convictions.

- (1) Adjudications. The setting aside of juvenile adjudications is governed by MCL 712A.18e.
- (2) Convictions. The court may only set aside a conviction as provided by MCL 780.621, *et seq.*

- (G) Access to Juvenile Offense Record of Convicted Adults. When the juvenile offense record of an adult convicted of a crime is made available to the appropriate agency, as provided in MCL 791.228(1), the record must state whether, with regard to each adjudication, the juvenile had an attorney or voluntarily waived an attorney.

NOTE: MCR 3.925 CORRESPONDS TO FORMER RULE 5.925.

SUBRULE (B) REGARDING THE RECORDING OF HEARINGS IS MODIFIED IN LIGHT OF MCL 712A.17(1), AND TO PROVIDE THAT A PLEA OF ADMISSION (AND ANY AGREEMENT WITH OR OBJECTION TO THE PLEA) MUST BE RECORDED.

SUBRULE (C) INCORPORATES THE CIRCUIT COURT RULE REGARDING SIGNING OF JUDGMENTS AND ORDERS, MCR 2.602(A), IN PLACE OF THE CURRENT PROVISION, WHICH REFERS TO SUBCHAPTER 5.600. JUDGMENTS AND ORDERS MAY BE SERVED BY FIRST-CLASS MAIL TO THE PERSON'S LAST KNOWN ADDRESS.

THE PROVISION ON CONFIDENTIALITY OF FILES IN SUBRULE (D)(2) ADDS AN EXPLICIT RECOGNITION OF RESTRICTIONS IMPOSED BY LAW.

SUBRULE (E) REGARDING DESTRUCTION OF FILES AND RECORDS IS SUBSTANTIALLY REWRITTEN.

THE PROVISIONS REGARDING SETTING ASIDE ADJUDICATIONS ARE PLACED IN A SEPARATE SUBRULE (F), AND SIMPLIFIED BY REFERRING TO THE GOVERNING STATUTE, MCL 712A.18e.

Rule 3.926 Transfer of Jurisdiction; Change of Venue

- (A) Definition. As used in MCL 712A.2, a child is "found within the county" in which the offense against the child occurred, in which the offense committed by the juvenile occurred, or in which the minor is physically present.
- (B) Transfer to County of Residence. When a minor is brought before the family division of the circuit court in a county other than that in which the minor resides, the court may transfer the case to the court in the county of residence before trial.
- (1) If both parents reside in the same county, or if the child resides in the county with a parent who has been awarded legal custody, a guardian, a legal custodian, or the child's sole legal parent, that county will be presumed to be the county of residence.
 - (2) In circumstances other than those enumerated in subsection (1) of this section, the court shall consider the following factors in determining the child's county of residence:

- (a) The county of residence of the parent or parents, guardian, or legal custodian.
 - (b) Whether the child has ever lived in the county, and, if so, for how long.
 - (c) Whether either parent has moved to another county since the inception of the case.
 - (d) Whether the child is subject to the prior continuing jurisdiction of another court.
 - (e) Whether a court has entered an order placing the child in the county for the purpose of adoption.
 - (f) Whether the child has expressed an intention to reside in the county.
 - (g) Any other factor the court considers relevant.
- (3) If the child has been placed in a county by court order or by placement by a public or private agency, the child shall not be considered a resident of the county in which he or she has been placed, unless the child has been placed for the purpose of adoption.
- (C) Costs. When a court other than the court in a county in which the minor resides orders disposition, it will be responsible for any costs incurred in connection with such order unless
- (1) the court in the county in which the minor resides agrees to pay the costs of such disposition, or
 - (2) the minor is made a state ward pursuant to the Youth Rehabilitation Services Act, MCL 803.301 *et seq.*, and the county of residence withholds consent to a transfer of the case.
- (D) Change of Venue; Grounds. The court, on motion by a party, may order a case to be heard before a court in another county:
- (1) for the convenience of the parties and witnesses, provided that a judge of the other court agrees to hear the case; or
 - (2) when an impartial trial cannot be had where the case is pending.
- All costs of the proceeding in another county are to be borne by the court ordering the change of venue.
- (E) Bifurcated Proceeding. If the judge of the transferring court and the judge of the receiving court agree, the case may be bifurcated to permit adjudication in the transferring court and disposition in the receiving court. The case may be returned to the receiving court immediately after the transferring court enters its order of adjudication.
- (F) Transfer of Records. The court entering an order of transfer or change of venue shall send

the original pleadings and documents, or certified copies of the pleadings and documents, to the receiving court without charge. Where the courts have agreed to bifurcate the proceedings, the court adjudicating the case shall send any supplemented pleadings and records or certified copies of the supplemented pleadings and records to the court entering the disposition in the case.

- (G) Designated Cases. Designated cases are to be filed in the county in which the offense is alleged to have occurred. Other than a change of venue for the purpose of trial, a designated case may not be transferred to any other county, except, after conviction, a designated case may be transferred to the juvenile's county of residence for entry of a juvenile disposition only. Sentencing of a juvenile, including delayed imposition of sentence, may only be done in the county in which the offense occurred.

NOTE: MCR 3.926 CORRESPONDS TO FORMER RULE 5.926.

DETAILS ARE ADDED TO SUBRULE (B) REGARDING THE COUNTY TO WHICH A CASE MAY BE TRANSFERRED.

NEW SUBRULE (E) COVERS THE SUBJECT OF BIFURCATING PROCEEDINGS, ALLOWING ADJUDICATION IN ONE COUNTY AND DISPOSITION IN ANOTHER. SEE MCL 712A.2(d). LANGUAGE REGARDING TRANSFER OF RECORDS IS INCLUDED IN SUBRULE (F).

Rule 3.927 Prior Court Orders

In a juvenile proceeding involving a minor who is subject to a prior order of another Michigan court, the manner of notice to the other court and the authority of the family division of the circuit court to proceed are governed by MCR 3.205.

NOTE: MCR 3.927 CORRESPONDS TO FORMER RULE 5.927.

Rule 3.928 Contempt of Court

- (A) Power. The court has the authority to hold persons in contempt of court as provided by MCL 600.1701 and 712A.26. A parent, guardian, or legal custodian of a juvenile who is within the court's jurisdiction and who fails to attend a hearing as required is subject to the contempt power as provided in MCL 712A.6a.
- (B) Procedure. Contempt of court proceedings are governed by MCL 600.1711, 600.1715, and

MCR 3.606. MCR 3.982-3.989 govern proceedings against a minor for contempt of a minor personal protection order.

- (C) Contempt by Juvenile. A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 17 years of age when the contempt was committed, may be sentenced to up to 30 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separate and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules.

NOTE: MCR 3.928 CORRESPONDS TO FORMER RULE 5.928. THE RULE IS LARGELY REWRITTEN, AND INCORPORATES ADDITIONAL STATUTORY (MCL 600.1701 *ET SEQ.*) AND COURT RULE (MCR 3.606, 3.982-3.989) PROVISIONS. NEW SUBRULE (C) COVERS CONTEMPT BY THE JUVENILE.

Rule 3.931 Initiating Delinquency Proceedings

- (A) Commencement of Proceeding. Any request for court action against a juvenile must be by written petition.
- (B) Content of Petition. A petition must contain the following information:
- (1) the juvenile's name, address, and date of birth, if known;
 - (2) the names and addresses, if known, of
 - (a) the juvenile's mother and father,
 - (b) the guardian, legal custodian, or person having custody of the juvenile, if other than a mother or father,
 - (c) the nearest known relative of the juvenile, if no parent, guardian, or legal custodian can be found, and
 - (d) any court with prior continuing jurisdiction;
 - (3) sufficient allegations that, if true, would constitute an offense by the juvenile;
 - (4) a citation to the section of the Juvenile Code relied upon for jurisdiction;
 - (5) a citation to the federal, state, or local law or ordinance allegedly violated by the juvenile;

- (6) the court action requested;
- (7) if applicable, the notice required by MCL 257.732(7), and the juvenile's Michigan driver's license number; and
- (8) information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending.

(C) Citation or Appearance Ticket.

- (1) A citation or appearance ticket may be used to initiate a delinquency proceeding if the charges against the juvenile are limited to:
 - (a) violations of the Michigan Vehicle Code, or of a provision of an ordinance substantially corresponding to any provision of that law, as provided by MCL 712A.2b.
 - (b) offenses that, if committed by an adult, would be appropriate for use of an appearance ticket under MCL 764.9c.
- (2) The citation or appearance ticket shall be treated by the court as if it were a petition, except that it may not serve as a basis for pretrial detention.

(D) Motor Vehicle Violations; Failure to Appear. If the juvenile is a Michigan resident and fails to appear or otherwise to respond to any matter pending relative to a motor vehicle violation, the court

- (1) must initiate the procedure required by MCL 257.321a for the failure to answer a citation, and
- (2) may issue an order to apprehend the juvenile after a petition is filed with the court.

NOTE: MCR 3.931 CORRESPONDS TO FORMER RULE 5.931. SUBRULE (C), COVERING USE OF A CITATION OR APPEARANCE TICKET, IS REWRITTEN TO BE MORE CONSISTENT WITH THE GOVERNING STATUTES. MCL 712A.12b, 764.9c.

Rule 3.932 Summary Initial Proceedings

- (A) Preliminary Inquiry. When a petition is not accompanied by a request for detention of the juvenile, the court may conduct a preliminary inquiry. Except in cases involving offenses enumerated in the Crime Victim's Rights Act, MCL 780.781(1)(f), the preliminary inquiry need not be conducted on the record. The court may, in the interest of the juvenile and the

public:

- (1) deny authorization of the petition;
 - (2) refer the matter to a public or private agency providing available services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*;
 - (3) direct that the juvenile and the parent, guardian, or legal custodian be notified to appear for further informal inquiry on the petition;
 - (4) proceed on the consent calendar as provided in subrule (C); or
 - (5) place the matter on the formal calendar as provided in subrule (D).
- (B) Offenses Listed in the Crime Victim's Rights Act. A case involving the alleged commission of an offense listed in the Crime Victim's Rights Act, MCL 780.781(1)(f), may only be removed from the adjudicative process upon compliance with the procedures set forth in that act. See MCL 780.786b.
- (C) Consent Calendar. If the court receives a petition, citation, or appearance ticket, and it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public, the court may proceed on the consent calendar without authorizing a petition to be filed. No case may be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian agree to have the case placed on the consent calendar. The court may transfer a case from the formal calendar to the consent calendar at any time before disposition.
- (1) Notice. Formal notice is not required for cases placed on the consent calendar except as required by article 2 of the Crime Victim's Rights Act, MCL 780.781 *et seq.*
 - (2) Plea; Adjudication. No formal plea may be entered in a consent calendar case, and the court must not enter an adjudication.
 - (3) Conference. The court shall conduct a consent calendar conference with the juvenile and the parent, guardian, or legal custodian to discuss the allegations. The victim may, but need not, be present.
 - (4) Case Plan. If it appears to the court that the juvenile has engaged in conduct that would subject the juvenile to the jurisdiction of the court, the court may issue a written consent calendar case plan.
 - (5) Custody. A consent calendar case plan must not contain a provision removing the juvenile from the custody of the parent, guardian, or legal custodian.
 - (6) Disposition. No order of disposition may be entered by the court in a case placed on the

consent calendar.

- (7) Closure. Upon successful completion by the juvenile of the consent calendar case plan, the court shall close the case and may destroy all records of the proceeding. No report or abstract may be made to any other agency nor may the court require the juvenile to be fingerprinted for a case completed and closed on the consent calendar.
- (8) Transfer to Formal Calendar. If it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may, without hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition, citation, or appearance ticket. Statements made by the juvenile during the proceeding on the consent calendar may not be used against the juvenile at a trial on the formal calendar on the same charge.
- (D) Formal Calendar. The court may authorize a petition to be filed and docketed on the formal calendar if it appears to the court that formal court action is in the best interest of the juvenile and the public. The court shall not authorize an original petition under MCL 712A.2(a)(1), unless the prosecuting attorney has approved submitting the petition to the court. At any time before disposition, the court may transfer the matter to the consent calendar.

NOTE: MCR 3.932 CORRESPONDS TO FORMER RULE 5.932.

SEVERAL PROVISIONS ARE MODIFIED IN RECOGNITION OF THE REQUIREMENTS OF THE CRIME VICTIM'S RIGHTS ACT, MCL 780.751 *ET SEQ.*

THE PROVISIONS GOVERNING PROCEEDINGS ON THE CONSENT CALENDAR ARE SUBSTANTIALLY REWRITTEN. SEE SUBRULE (C).

Rule 3.933 Acquiring Physical Control of Juvenile

- (A) Custody Without Court Order. When an officer apprehends a juvenile for an offense without a court order and does not warn and release the juvenile, does not refer the juvenile to a diversion program, and does not have authorization from the prosecuting attorney to file a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, the officer may:
 - (1) issue a citation or ticket to appear at a date and time to be set by the court and release the juvenile;
 - (2) accept a written promise of the parent, guardian, or legal custodian to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to

the parent, guardian, or legal custodian; or

(3) take the juvenile into custody and submit a petition, if:

- (a) the officer has reason to believe that because of the nature of the offense, the interest of the juvenile or the interest of the public would not be protected by release of the juvenile, or
- (b) a parent, guardian, or legal custodian cannot be located or has refused to take custody of the juvenile.

(B) Custody With Court Order. When a petition is presented to the court, and probable cause exists to believe that a juvenile has committed an offense, the court may issue an order to apprehend the juvenile. The order may include authorization to

- (1) enter specified premises as required to bring the juvenile before the court, and
- (2) detain the juvenile pending preliminary hearing.

(C) Notification of Court. The officer who apprehends a juvenile must immediately contact the court when:

- (1) the officer detains the juvenile,
- (2) the officer is unable to reach a parent, guardian, or legal custodian who will appear promptly to accept custody of the juvenile, or
- (3) the parent, guardian, or legal custodian will not agree to bring the juvenile to court as provided in subrule (A)(2).

(D) Separate Custody of Juvenile. While awaiting arrival of the parent, guardian, or legal custodian, appearance before the court, or otherwise, the juvenile must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner.

NOTE: MCR 3.933 CORRESPONDS TO FORMER RULE 5.933.

Rule 3.934 Arranging Court Appearance; Detained Juvenile

(A) General. Unless the prosecuting attorney has authorized a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, when a juvenile is apprehended and not released, the officer shall:

- (1) forthwith take the juvenile
 - (a) before the court for a preliminary hearing, or
 - (b) to a place designated by the court pending the scheduling of a preliminary hearing;
- (2) ensure that the petition is prepared and presented to the court;
- (3) notify the parent, guardian, or legal custodian of the detaining of the juvenile and of the need for the presence of the parent, guardian, or legal custodian at the preliminary hearing;
- (4) prepare a custody statement for submission to the court including:
 - (a) the grounds for and the time and location of detention, and
 - (b) the names of persons notified and the times of notification, or the reason for failure to notify.

(B) Temporary Detention; Court Not Open.

- (1) Grounds. A juvenile apprehended without court order when the court is not open may be detained pending preliminary hearing if the offense or the juvenile meets a circumstance set forth in MCR 3.935(D)(1), or if no parent, guardian, or legal custodian can be located.
- (2) Designated Court Person. The court must designate a judge, referee, or other person who may be contacted by the officer taking a juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing.

NOTE: MCR 3.934 CORRESPONDS TO FORMER RULE 5.934.

Rule 3.935 Preliminary Hearing

(A) Time.

- (1) Commencement. The preliminary hearing must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), or the juvenile must be released.

- (2) General Adjournment. The court may adjourn the hearing for up to 14 days:
- (a) to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or
 - (b) for other good cause shown.
- (3) Special Adjournment; Specified Juvenile Violation. This subrule applies to a juvenile accused of an offense that allegedly was committed between the juvenile's 14th and 17th birthdays and that would constitute a specified juvenile violation listed in MCL 712A.2(a)(1).
- (a) On a request of a prosecuting attorney who has approved the submission of a petition with the court, conditioned on the opportunity to withdraw it within 5 days if the prosecuting attorney authorizes the filing of a complaint and warrant with a magistrate, the court shall comply with subrules (i) through (iii).
 - (i) The court shall adjourn the preliminary hearing for up to 5 days to give the prosecuting attorney the opportunity to determine whether to authorize the filing of a criminal complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, instead of unconditionally approving the filing of a petition with the court.
 - (ii) The court, during the special adjournment under subrule 3(a), must defer a decision regarding whether to authorize the filing of the petition.
 - (iii) The court, during the special adjournment under subrule (3)(a), must release the juvenile pursuant to MCR 3.935(E) or detain the juvenile pursuant to MCR 3.935(D).
 - (b) If, at the resumption of the preliminary hearing following special adjournment, the prosecuting attorney has not authorized the filing with a magistrate of a criminal complaint and warrant on the charge concerning the juvenile, approval of the petition by the prosecuting attorney shall no longer be deemed conditional and the court shall proceed with the preliminary hearing and decide whether to authorize the petition to be filed.
 - (c) This rule does not preclude the prosecuting attorney from moving for a waiver of jurisdiction over the juvenile under MCR 3.950.

(B) Procedure.

- (1) The court shall determine whether the parent has been notified and is present. The preliminary hearing may be conducted without a parent present, provided a guardian ad litem or attorney appears with the juvenile.

- (2) The court shall read the allegations in the petition.
 - (3) The court shall determine whether the petition should be dismissed, whether the matter should be referred to alternate services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*, whether the matter should be heard on the consent calendar as provided by MCR 3.932(C), or whether to continue the preliminary hearing.
 - (4) If the hearing is to continue, the court shall advise the juvenile on the record in plain language of:
 - (a) the right to an attorney pursuant to MCR 3.915(A)(1);
 - (b) the right to trial by judge or jury on the allegations in the petition and that a referee may be assigned to hear the case unless demand for a jury or judge is filed pursuant to MCR 3.911 or 3.912; and
 - (c) the privilege against self-incrimination and that any statement by the juvenile may be used against the juvenile.
 - (5) If the charge is a violation of MCL 712A.2(a)(2)-(4) or (d), the court must inquire if the juvenile or a parent is a member of any American Indian tribe or band. If the juvenile is a member, or if a parent is a tribal member and the juvenile is eligible for membership in the tribe, the court must determine the identity of the tribe or band and follow the procedures set forth in MCR 3.980.
 - (6) The juvenile must be allowed an opportunity to deny or otherwise plead to the allegations.
 - (7) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the petition to be filed pursuant to MCR 3.932(D). If it authorizes the filing of the petition, the court must:
 - (a) determine if fingerprints must be taken as provided by MCL 712A.11(5) and MCR 3.936; and
 - (b) determine if the juvenile should be released, with or without conditions, or detained, as provided in subrules (C)-(F).
 - (8) The juvenile may be detained pending the completion of the preliminary hearing if the conditions for detention under subrule (D) are established.
- (C) Determination Whether to Release or Detain.
- (1) Factors. In determining whether the juvenile is to be released, with or without conditions, or detained, the court shall consider the following factors:

- (a) the juvenile's family ties and relationships,
 - (b) the juvenile's prior delinquency record,
 - (c) the juvenile's record of appearance or nonappearance at court proceedings,
 - (d) the violent nature of the alleged offense,
 - (e) the juvenile's prior history of committing acts that resulted in bodily injury to others,
 - (f) the juvenile's character and mental condition,
 - (g) the court's ability to supervise the juvenile if placed with a parent or relative, and
 - (h) any other factor indicating the juvenile's ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released.
- (2) Findings. The court must state the reasons for its decision to grant or deny release on the record or in a written memorandum. The court's statement need not include a finding on each of the enumerated factors.

(D) Detention.

- (1) Conditions for Detention. A juvenile may be ordered detained or continued in detention if the court finds probable cause to believe the juvenile committed the offense, and that one or more of the following circumstances are present:
- (a) the offense alleged is so serious that release would endanger the public safety;
 - (b) the juvenile is charged with an offense that would be a felony if committed by an adult and will likely commit another offense pending trial, if released, and
 - (i) another petition is pending against the juvenile,
 - (ii) the juvenile is on probation, or
 - (iii) the juvenile has a prior adjudication, but is not under the court's jurisdiction at the time of apprehension;
 - (c) there is a substantial likelihood that if the juvenile is released to the parent, guardian, or legal custodian, with or without conditions, the juvenile will fail to appear at the next court proceeding;

- (d) the home conditions of the juvenile make detention necessary;
 - (e) the juvenile has run away from home;
 - (f) the juvenile has failed to remain in a detention facility or nonsecure facility or placement in violation of a valid court order; or
 - (g) pretrial detention is otherwise specifically authorized by law.
- (2) Waiver. A juvenile may waive the probable cause determination required by subrule (1) only if the juvenile is represented by an attorney.
 - (3) Evidence; Findings. The juvenile may contest the sufficiency of evidence by cross-examination of witnesses, presentation of defense witnesses, or by other evidence. The court shall permit the use of subpoena power to secure attendance of defense witnesses. The Michigan Rules of Evidence do not apply, other than those with respect to privileges.
 - (4) Type of Detention. The detained juvenile must be placed in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the requirements of MCL 712A.15 and 712A.16.

(E) Release; Conditions.

- (1) The court may release a juvenile to a parent pending the resumption of the preliminary hearing, pending trial, or until further order without conditions, or, if the court determines that release with conditions is necessary to reasonably ensure the appearance of the juvenile as required or to reasonably ensure the safety of the public, the court may, in its discretion, order that the release of the juvenile be on the condition or combination of conditions that the court determines to be appropriate, including, but not limited to:
 - (a) that the juvenile will not commit any offense while released,
 - (b) that the juvenile will not use alcohol or any controlled substance or tobacco product,
 - (c) that the juvenile will participate in a substance abuse assessment, testing, or treatment program,
 - (d) that the juvenile will participate in a treatment program for a physical or mental condition,
 - (e) that the juvenile will comply with restrictions on personal associations or place of residence,

- (f) that the juvenile will comply with a specified curfew,
 - (g) that the juvenile will maintain appropriate behavior and attendance at an educational program, and
 - (h) that the juvenile's driver's license or passport will be surrendered.
- (2) Violation of Conditions of Release. If a juvenile is alleged to have violated the conditions set by the court, the court may order the juvenile apprehended and detained immediately. The court may then modify the conditions or revoke the juvenile's release status after providing the juvenile an opportunity to be heard on the issue of the violation of conditions of release.
- (F) Bail. In addition to any other conditions of release, the court may require a parent, guardian, or legal custodian to post bail.
- (1) Cash or Surety Bond. The court may require a parent, guardian, or legal custodian to post a surety bond or cash in the full amount of the bail, at the option of the parent, guardian, or legal custodian. A surety bond must be written by a person or company licensed to write surety bonds in Michigan. Except as otherwise provided by this rule, MCR 3.604 applies to bonds posted under this rule.
 - (2) Option to Deposit Cash or 10 Percent of Bail. Unless the court requires a surety bond or cash in the full amount of the bail as provided in subrule (F)(1), the court shall advise the parent, guardian, or legal custodian of the option to satisfy the monetary requirement of bail by:
 - (a) posting either cash or a surety bond in the full amount of bail set by the court or a surety bond written by a person or company licensed to write surety bonds in Michigan, or
 - (b) depositing with the register, clerk, or cashier of the court currency equal to 10 percent of the bail, but at least \$10.
 - (3) Revocation or Modification. The court may modify or revoke the bail for good cause after providing the parties notice and an opportunity to be heard.
 - (4) Return of Bail. If the conditions of bail are met, the court shall discharge any surety.
 - (a) If disposition imposes reimbursement or costs, the bail money posted by the parent must first be applied to the amount of reimbursement and costs, and the balance, if any, returned.
 - (b) If the juvenile is discharged from all obligations in the case, the court shall return the cash posted, or return 90 percent and retain 10 percent if the amount posted

represented 10 percent of the bail.

- (5) Forfeiture. If the conditions of bail are not met, the court may issue a writ for the apprehension of the juvenile and enter an order declaring the bail money, if any, forfeited.
 - (a) The court must immediately mail notice of the forfeiture order to the parent at the last known address and to any surety.
 - (b) If the juvenile does not appear and surrender to the court within 28 days from the forfeiture date, or does not within the period satisfy the court that the juvenile is not at fault, the court may enter judgment against the parent and surety, if any, for the entire amount of the bail and, when allowed, costs of the court proceedings.

NOTE: MCR 3.935 CORRESPONDS TO FORMER RULE 5.935.

THE CHANGES IN SUBRULES (A) AND (B) ARE IN TERMINOLOGY AND ORGANIZATION.

THE PROVISIONS ON PRETRIAL DETENTION AND RELEASE ARE SUBSTANTIALLY REWRITTEN. SEE SUBRULES (C)-(F). A NEW LIST OF CONDITIONS THAT MAY BE IMPOSED ON RELEASE ARE INCLUDED IN SUBRULE (E)(1).

Rule 3.936 Fingerprinting

- (A) General. The court must permit fingerprinting of a juvenile pursuant to MCL 712A.11(5) and 712A.18(10), and as provided in this rule. Notice of fingerprinting retained by the court is confidential.
- (B) Order for Fingerprints. At the time that the court authorizes the filing of a petition alleging a juvenile offense and before the court enters an order of disposition on a juvenile offense, the court shall examine the confidential files and verify that the juvenile has been fingerprinted. If it appears to the court that the juvenile has not been fingerprinted, the court must:
 - (1) direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff's department, so fingerprints may be taken; or
 - (2) issue an order to the sheriff's department to apprehend the juvenile and to take the fingerprints of the juvenile.
- (C) Notice of Disposition. The court shall notify the Department of State Police in writing:

- (1) of any juvenile who had been fingerprinted for a juvenile offense and who was found not to be within the jurisdiction of the court under MCL 712A.2(a)(1); or
 - (2) that the court took jurisdiction of a juvenile under MCL 712A.2(a)(1), who was fingerprinted for a juvenile offense, specifying the offense, the method of adjudication, and the disposition ordered.
- (D) Order for Return of Fingerprints. When a juvenile has been fingerprinted for a juvenile offense, but no petition on the offense is submitted to the court, the court does not authorize the petition, or the court does not take jurisdiction of the juvenile under MCL 712A.2(a)(1), if the records have not been destroyed as provided by MCL 28.243(7)-(8), the court, on motion filed pursuant to MCL 28.243(8), shall:
- (1) issue an order directing the Department of State Police, or other official holding the information, to return the fingerprints, arrest card, and description of the juvenile pertaining to the offense, other than an offense as listed in MCL 28.243(12); and
 - (2) direct that fingerprint information in the court file pertaining to the offense be destroyed.

NOTE: MCR 3.936 CORRESPONDS TO FORMER RULE 5.936. THERE ARE A FEW ADJUSTMENTS TO CONFORM TO STATUTORY CHANGES MADE BY 2001 PA 187, AMENDING MCL 28.241 *ET SEQ.*

Rule 3.939 Case Transferred From District Court Pursuant to Subchapter 6.900

- (A) General Procedure. Except as provided in subrule (B), the court shall hear and dispose of a case transferred pursuant to MCL 766.14 in the same manner as if the case had been commenced in the family division of circuit court. A petition that has been approved by the prosecuting attorney must be submitted to the court.
- (B) Probable Cause Finding of Magistrate. The court may use the probable cause finding of the magistrate made at the preliminary examination to satisfy the probable cause requirement of MCR 3.935(D)(1).

NOTE: MCR 3.939 CORRESPONDS TO FORMER RULE 5.939.

Rule 3.941 Pleas of Admission or No Contest

- (A) Capacity. A juvenile may offer a plea of admission or of no contest to an offense with the

consent of the court. The court shall not accept a plea to an offense unless the court is satisfied that the plea is accurate, voluntary, and understanding.

(B) Conditional Pleas. The court may accept a plea of admission or of no contest conditioned on preservation of an issue for appellate review.

(C) Plea Procedure. Before accepting a plea of admission or of no contest, the court must personally address the juvenile and must comply with subrules (1)-(4).

(1) An Understanding Plea. The court shall tell the juvenile:

- (a) the name of the offense charged,
- (b) the possible dispositions,
- (c) that if the plea is accepted, the juvenile will not have a trial of any kind, so the juvenile gives up the rights that would be present at trial, including the right:
 - (i) to trial by jury,
 - (ii) to trial by the judge if the juvenile does not want trial by jury,
 - (iii) to be presumed innocent until proven guilty,
 - (iv) to have the petitioner or prosecutor prove guilt beyond a reasonable doubt,
 - (v) to have witnesses against the juvenile appear at the trial,
 - (vi) to question the witnesses against the juvenile,
 - (vii) to have the court order any witnesses for the juvenile's defense to appear at the trial,
 - (viii) to remain silent and not have that silence used against the juvenile, and
 - (ix) to testify at trial, if the juvenile wants to testify.

(2) A Voluntary Plea.

- (a) The court shall confirm any plea agreement on the record.
- (b) The court shall ask the juvenile if any promises have been made beyond those in a plea agreement or whether anyone has threatened the juvenile.

(3) An Accurate Plea. The court may not accept a plea of admission or of no contest

without establishing support for a finding that the juvenile committed the offense:

- (a) either by questioning the juvenile or by other means when the plea is a plea of admission, or
 - (b) by means other than questioning the juvenile when the juvenile pleads no contest. The court shall also state why a plea of no contest is appropriate.
- (4) Support for Plea. The court shall inquire of the parent, guardian, legal custodian, or guardian ad litem, if present, whether there is any reason why the court should not accept the plea tendered by the juvenile.
- (D) Plea Withdrawal. The court may take a plea of admission or of no contest under advisement. Before the court accepts the plea, the juvenile may withdraw the plea offer by right. After the court accepts the plea, the court has discretion to allow the juvenile to withdraw a plea.

NOTE: MCR 3.941 CORRESPONDS TO FORMER RULE 5.941.

THE LANGUAGE REQUIRING THAT THE PARENT'S OR GUARDIAN AD LITEM'S AGREEMENT OR OBJECTION TO A PLEA BE ON THE RECORD IS DELETED FROM THIS RULE, BUT IS INCLUDED IN MCR 3.925(B).

Rule 3.942 Trial

- (A) Time. In all cases the trial must be held within 6 months after the filing of the petition, unless adjourned for good cause. If the juvenile is detained, the trial has not started within 63 days after the juvenile is taken into custody, and the delay in starting the trial is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted, unless the juvenile is being detained on another matter.
- (B) Preliminary Matters.
- (1) The court shall determine whether all parties are present.
 - (a) The juvenile has the right to be present at the trial with an attorney, parent, guardian, legal custodian, or guardian ad litem, if any.
 - (b) The court may proceed in the absence of a parent, guardian, or legal custodian who was properly notified to appear.
 - (c) The victim has the right to be present at trial as provided by MCL 780.789.

- (2) The court shall read the allegations contained in the petition, unless waived.
- (3) The court shall inform the juvenile of the right to the assistance of an attorney pursuant to MCR 3.915 unless an attorney appears representing the juvenile. If the juvenile requests to proceed without the assistance of an attorney, the court must advise the juvenile of the dangers and disadvantages of self-representation and make sure the juvenile is literate and competent to conduct the defense.
- (C) Evidence; Standard of Proof. The Michigan Rules of Evidence and the standard of proof beyond a reasonable doubt apply at trial.
- (D) Verdict. In a delinquency proceeding, the verdict must be guilty or not guilty of either the offense charged or a lesser included offense.

NOTE: MCR 3.942 CORRESPONDS TO FORMER RULE 5.942.

NEW SUBRULE (D) EXPRESSLY PROVIDES THAT IN A DELINQUENCY CASE, THE VERDICT MAY BE ON THE CHARGED OFFENSE OR A LESSER INCLUDED ONE.

Rule 3.943 Dispositional Hearing

- (A) General. A dispositional hearing is conducted to determine what measures the court will take with respect to a juvenile and, when applicable, any other person, once the court has determined following trial or plea that the juvenile has committed of an offense.
- (B) Time. The interval between the plea of admission or trial and disposition, if any, is within the court's discretion. When the juvenile is detained, the interval may not be more than 35 days, except for good cause.
- (C) Evidence.
 - (1) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply at dispositional hearings. All relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial.
 - (2) The juvenile, or the juvenile's attorney, and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when those individuals are reasonably available.
 - (3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at a dispositional hearing, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(D) Presence of Juvenile and Victim.

- (1) The juvenile may be excused from part of the dispositional hearing for good cause shown, but must be present when the disposition is announced.
- (2) The victim has the right to be present at the dispositional hearing and to make an impact statement as provided by the Crime Victim's Rights Act, MCL 780.751 *et seq.*

(E) Dispositions.

- (1) If the juvenile has been found to have committed an offense, the court may enter an order of disposition as provided by MCL 712A.18.
- (2) In making second and subsequent dispositions in delinquency cases, the court must consider imposing increasingly severe sanctions, which may include imposing additional conditions of probation; extending the term of probation; imposing additional costs; ordering a juvenile who has been residing at home into an out-of-home placement; ordering a more restrictive placement; ordering state wardship for a child who has not previously been a state ward; or any other conditions deemed appropriate by the court. Waiver of jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for the purpose of this rule.
- (3) Before a juvenile is placed in an institution outside the state of Michigan as a disposition, the court must find that:
 - (a) institutional care is in the best interests of the juvenile,
 - (b) equivalent facilities to meet the juvenile's needs are not available within Michigan, and
 - (c) the placement will not cause undue hardship.
- (4) The court shall not enter an order of disposition for a juvenile offense until the court verifies that the juvenile has been fingerprinted. If the juvenile has not been fingerprinted, the court shall proceed as provided by MCR 3.936.
- (5) If the court enters an order pursuant to the Crime Victim's Rights Act, MCL 780.751 *et seq.*, the court shall only order the payment of one assessment at any dispositional hearing, regardless of the number of offenses.
- (6) The court shall prepare and forward to the Secretary of State an abstract of its findings at such times and for such offenses as are required by law.
- (7) Mandatory Detention for Use of a Firearm.

- (a) In addition to any other disposition, a juvenile, other than a juvenile sentenced in the same manner as an adult under MCL 712A.18(1)(n), shall be committed under MCL 712A.18(1)(e) to a detention facility for a specified period of time if all the following circumstances exist:
 - (i) the juvenile is under the jurisdiction of the court under MCL 712A.2(a)(1),
 - (ii) the juvenile was found to have violated a law of this state or of the United States or a criminal municipal ordinance, and
 - (iii) the juvenile was found to have used a firearm during the offense.
- (b) The length of the commitment to a detention facility shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult.
- (c) "Firearm" means any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion, except any smoothbore rifle or hand gun designed and manufactured exclusively for propelling BB's not exceeding .177 caliber by means of spring, gas, or air.

NOTE: MCR 3.943 CORRESPONDS TO FORMER RULE 5.943.

SUBRULE (A) IS MODIFIED TO MAKE CLEAR THAT A DISPOSITIONAL HEARING TAKES PLACE ONLY AFTER A FINDING THAT THE JUVENILE HAS COMMITTED AN OFFENSE.

SUBRULE (C)(1) SPECIFIES THAT THE RULES OF EVIDENCE DO NOT APPLY IN DISPOSITIONAL PHASE PROCEEDINGS, EXCEPT THOSE WITH RESPECT TO PRIVILEGES.

THE AMENDMENT OF SUBRULE (D) RECOGNIZES THE RIGHT OF THE VICTIM TO PRESENT AN IMPACT STATEMENT.

NEW SUBRULE (E)(2) DIRECTS THE CONSIDERATION OF INCREASINGLY SEVERE SANCTIONS IN SECOND AND SUBSEQUENT DISPOSITIONS.

NEW SUBRULE (E)(5) PROVIDES THAT ONLY ONE ASSESSMENT UNDER THE CRIME VICTIM'S RIGHTS ACT IS TO BE MADE REGARDLESS OF THE NUMBER OF OFFENSES.

NEW SUBRULE (E)(6) SPECIFICALLY REQUIRES FORWARDING AN ABSTRACT OF FINDINGS TO THE SECRETARY OF STATE AS REQUIRED BY LAW.

Rule 3.944 Probation Violation

(A) Petition; Temporary Custody.

- (1) Upon receipt of a sworn supplemental petition alleging that the juvenile has violated any condition of probation, the court may:
 - (a) direct that the juvenile be notified pursuant to MCR 3.920 to appear for a hearing on the alleged violation, which notice must include a copy of the probation violation petition and a notice of the juvenile's rights as provided in subrule (C)(1); or
 - (b) order that the juvenile be apprehended and brought to the court for a detention hearing, which must be commenced within 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined in MCR 8.110 (D)(2).
- (2) When a juvenile is apprehended pursuant to court order as provided in subrule (A)(1)(b), the officer must:
 - (a) forthwith take the juvenile
 - (i) to the court for a detention hearing, or
 - (ii) to the place designated by the court pending the scheduling of a detention hearing; and
 - (b) notify the custodial parent, guardian, or legal custodian that the juvenile has been taken into custody, of the time and place of the detention hearing, if known, and of the need for the presence of the parent, guardian, or legal custodian at the detention hearing.

(B) Detention Hearing; Procedure. At the detention hearing:

- (1) The court must determine whether a parent, guardian, or legal custodian has been notified and is present. If a parent, guardian, or legal custodian has been notified, but fails to appear, the detention hearing may be conducted without a parent, guardian, or legal custodian if a guardian ad litem or attorney appears with the juvenile.
- (2) The court must provide the juvenile with a copy of the petition alleging probation violation.
- (3) The court must read the petition to the juvenile, unless the attorney or juvenile waives

the reading.

- (4) The court must advise the juvenile of the juvenile's rights as provided in subrule (C)(1) and of the possible dispositions.
- (5) The juvenile must be allowed an opportunity to deny or otherwise plead to the probation violation. If the juvenile wishes to admit the probation violation or plead no contest, the court must comply with subrule (D) before accepting the plea.
 - (a) If the juvenile admits the probation violation or pleads no contest, and the court accepts the plea, the court may modify the existing order of probation or may order any disposition available under MCL 712A.18 or MCL 712A.18a.
 - (b) If the juvenile denies the probation violation or remains silent, the court must schedule a probation violation hearing, which must commence within 42 days. The court may order the juvenile detained without bond pending the probation violation hearing if there is probable cause to believe the juvenile violated probation. If the hearing is not commenced within 42 days, and the delay in commencing the hearing is not attributable to the juvenile, the juvenile must be released pending hearing without requiring that bail be posted.

(C) Probation Violation Hearing.

- (1) At the probation violation hearing, the juvenile has the following rights:
 - (a) the right to be present at the hearing,
 - (b) the right to an attorney pursuant to MCR 3.915(A)(1),
 - (c) the right to have the petitioner prove the probation violation by a preponderance of the evidence,
 - (d) the right to have the court order any witnesses to appear at the hearing,
 - (e) the right to question witnesses against the juvenile,
 - (f) the right to remain silent and not have that silence used against the juvenile, and
 - (g) the right to testify at the hearing, if the juvenile wants to testify.
- (2) At the probation violation hearing, the Michigan Rules of Evidence do not apply, other than those with respect to privileges. There is no right to a jury.
- (3) If it is alleged that the juvenile violated probation by having been found, pursuant to MCR 3.941 or MCR 3.942, to have committed an offense, the juvenile may then be

found to have violated probation pursuant to this rule.

(D) Pleas of Admission or No Contest. If the juvenile wishes to admit the probation violation or plead no contest, before accepting the plea, the court must:

- (1) tell the juvenile the nature of the alleged probation violation;
- (2) tell the juvenile the possible dispositions;
- (3) tell the juvenile that if the plea is accepted, the juvenile will not have a contested hearing of any kind, so the juvenile would give up the rights that the juvenile would have at a contested hearing, including the rights as provided in subrule (C)(1);
- (4) confirm any plea agreement on the record;
- (5) ask the juvenile if any promises have been made beyond those in the plea agreement and whether anyone has threatened the juvenile;
- (6) establish support for a finding that the juvenile violated probation,
 - (a) by questioning the juvenile or by other means when the plea is a plea of admission, or
 - (b) by means other than questioning the juvenile when the juvenile pleads no contest. The court must also state why a plea of no contest is appropriate;
- (7) inquire of the parent, guardian, legal custodian, or guardian ad litem whether there is any reason why the court should not accept the juvenile's plea. Agreement or objection by the parent, guardian, legal custodian, or guardian ad litem to a plea of admission or of no contest by a juvenile shall be placed on the record if the parent, guardian, legal custodian, or guardian ad litem is present; and
- (8) determine that the plea is accurately, voluntarily and understandingly made.

(E) Disposition of Probation Violation; Reporting.

- (1) If, after hearing, the court finds that a violation of probation has occurred, the court may modify the existing order of probation or order any disposition available under MCL 712A.18 or MCL 712A.18a.
- (2) If, after hearing, the court finds that a violation of probation occurred on the basis of the juvenile having committed an offense, that finding must be recorded as a violation of probation only and not a finding that the juvenile committed the underlying offense. That finding must not be reported to the State Police or the Secretary of State as an adjudication or a disposition.

Note: THE PROVISIONS OF FORMER RULE 5.944 ARE SPLIT INTO TWO RULES, WITH MCR 3.944 COVERING PROBATION VIOLATION, AND NEW MCR 3.945 COVERING DISPOSITIONAL REVIEW. FORMER SUBRULES 5.944(B)-(E) ARE RELOCATED TO MCR 3.945.

THE PROBATION VIOLATION PROVISIONS ARE MUCH MORE DETAILED THAN THOSE FOUND IN FORMER RULE 5.944(A).

SUBRULE (A)(2) COVERS NOTICE TO THE JUVENILE’S PARENTS AFTER APPREHENSION OF THE JUVENILE UNDER A COURT ORDER.

SUBRULE (B) SETS UP PROCEDURES FOR A HEARING REGARDING DETENTION PENDING DISPOSITION OF THE VIOLATION CHARGES.

SUBRULE (C) ADDS DETAILS REGARDING THE RIGHTS OF THE JUVENILE AT THE PROBATION VIOLATION HEARING AND OTHER PROCEDURAL PROVISIONS, WHICH ARE BRIEFLY STATED IN FORMER RULE 5.944(A)(5).

NEW SUBRULE (D) HAS DETAILED PROVISIONS REGARDING PLEAS OF ADMISSION AND NO CONTEST, WHICH INCLUDE THE SORT OF ADVICE THAT IS GIVEN IN OTHER PLEA PROCEEDINGS.

Rule 3.945 Dispositional Review

(A) Dispositional Review Hearings.

(1) Generally. The court must conduct periodic hearings to review the dispositional orders in delinquency cases in which the juvenile has been placed outside the home. Such review hearings must be conducted at intervals designated by the court, or may be requested at any time by a party or by a probation officer or caseworker. The victim has a right to make a statement at the hearing or submit a written statement for use at the hearing, or both. At a disposition review hearing, the court may modify or amend the dispositional order or treatment plan to include any disposition permitted by MCL 712A.18 and MCL 712A.18a or as otherwise permitted by law. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

(2) Required Review Hearings.

(a) If the juvenile is placed in out-of-home care, the court must hold dispositional review hearings no later than every 182 days after the initial disposition, as provided in MCL 712A.19(2).

- (b) A review hearing is required before a juvenile is moved to a more physically restrictive type of placement, unless the court in its dispositional order has provided for a more physically restrictive type of placement. A review hearing is not required if the juvenile and a parent consent to the new placement in a writing filed with the court. A juvenile, who has been ordered placed in a juvenile facility, may be released only with the approval of the court.

(B) Hearing to Extend Jurisdiction.

- (1) When Required. When a juvenile committed under MCL 712A.18(1)(e) for an offense specified in MCL 718A.18d remains under court jurisdiction after the juvenile's 18th birthday, the court must conduct a hearing to determine whether to extend the court's jurisdiction to age 21, pursuant to MCL 712A.18d.
 - (a) Time of Hearing. Unless adjourned for good cause, a commitment review hearing must be held as nearly as possible to, but before, the juvenile's 19th birthday.
 - (b) Notice of Hearing. Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if the address or whereabouts are known, the parent, guardian or legal custodian of the juvenile, at least 14 days before the hearing. The notice must clearly indicate that the court may extend jurisdiction over the juvenile until the juvenile reaches 21 years of age and must include advice to the juvenile and the parent, guardian, or legal custodian that the juvenile has the right to an attorney.
- (2) Appointment of Attorney. The court must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained.
- (3) Evidence; Commitment Report. The Michigan Rules of Evidence do not apply, other than those with respect to privileges. The institution, agency, or facility must prepare a report for use at the hearing to extend jurisdiction. The report must contain information required by MCL 803.225. The court must consider this information in determining whether to extend jurisdiction beyond the age of 19.
- (4) Burden of Proof; Findings. The court must extend jurisdiction over the juvenile until the age of 21, unless the juvenile proves by a preponderance of the evidence that the juvenile has been rehabilitated and does not present a serious risk to public safety. In making the determination, the court must consider the following factors:
 - (a) the extent and nature of the juvenile's participation in education, counseling, or work programs;
 - (b) the juvenile's willingness to accept responsibility for prior behavior;

- (c) the juvenile's behavior in the current placement;
- (d) the juvenile's prior record, character, and physical and mental maturity;
- (e) the juvenile's potential for violent conduct, as demonstrated by prior behavior;
- (f) the recommendations of the institution, agency, or facility charged with the juvenile's care regarding the appropriateness of the juvenile's release or continued custody; and
- (g) any other information the prosecuting attorney or the juvenile submits.

(C) Review of Extended Jurisdiction Cases.

- (1) Out-of-Home Care. If the juvenile is placed outside the home, the court must hold a dispositional review hearing no later than every 182 days after the hearing to extend jurisdiction.
- (2) Periodic Review. If the institution, agency, or facility to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution, agency, or facility may petition the court to conduct a review hearing at any time before the juvenile becomes 21 years of age.

(D) Juvenile on Conditional Release. The procedures set forth in MCR 3.944 apply to juveniles committed under MCL 712A.18 who have allegedly violated a condition of release after being returned to the community on release from a public institution. The court need not conduct such a hearing when there will be an administrative hearing by the agency to which the juvenile is committed, provided the court has not retained jurisdiction.

NOTE: MCR 3.945 IS NEW, COVERING THE POST-DISPOSITION REVIEWS AND HEARING PROCEDURES FORMERLY FOUND IN SUBRULES 5.944(B)-(E), WITH ADDITIONAL DETAILS.

SUBRULE (A) HAS GENERAL PROVISIONS DIRECTING REVIEW HEARINGS IN ALL DELINQUENCY CASES IN WHICH THE JUVENILE IS PLACED OUTSIDE THE HOME, INCLUDING SPECIFIC TIME LIMITS, AND SPECIFICALLY REQUIRING A HEARING BEFORE THE JUVENILE IS MOVED TO A MORE RESTRICTIVE ENVIRONMENT.

SUBRULE (B) DEALS WITH EXTENSION OF THE COURT'S JURISDICTION AFTER A JUVENILE'S 18TH BIRTHDAY, AS PERMITTED BY MCL 712A.18d. THE PROVISION HAS MORE DETAIL THAN FORMER MCR 5.944(D)(3) ON MATTERS SUCH AS THE TIME AND NOTICE OF HEARING, APPOINTMENT OF COUNSEL, RULES OF EVIDENCE, AND BURDEN OF PROOF, AS WELL AS THE FACTORS THAT ARE TO BE CONSIDERED IN MAKING THE DECISION. SEE MCL 712A.18d(1). THE

BURDEN OF PROOF IS ON THE JUVENILE TO PROVE BOTH REHABILITATION AND THAT THE JUVENILE DOES NOT PRESENT A SERIOUS RISK TO PUBLIC SAFETY. SEE MCL 712A.18d(2).

SUBRULE (C) COVERS REVIEW HEARINGS IN EXTENDED JURISDICTION CASES.

Rule 3.946 Post-Dispositional Secure Detention Pending Return to Placement

- (A) If a juvenile who has been found to have committed an offense that would be a misdemeanor or a felony if committed by an adult has been placed out of the home by court order or by the Family Independence Agency, and the juvenile leaves such placement without authority, upon being apprehended the juvenile may be detained without the right to bail. Any detention must be authorized by the court.
- (B) If a juvenile is placed in secure detention pursuant to this rule and no new petition is filed that would require a preliminary hearing pursuant to MCR 3.935, and no probation violation petition is filed, the court must conduct a detention hearing within 48 hours after the juvenile has been taken into custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2).
- (C) At the detention hearing the court must:
 - (1) assure that the custodial parent, guardian, or legal custodian has been notified, if that person's whereabouts are known,
 - (2) advise the juvenile of the right to be represented by an attorney,
 - (3) determine whether the juvenile should be released or should continue to be detained.

NOTE: MCR 3.946 IS A NEW PROVISION DEALING WITH A SITUATION IN WHICH A JUVENILE HAS BEEN PLACED OUT OF HOME BY COURT ORDER OR BY THE FAMILY INDEPENDENCE AGENCY FOR HAVING COMMITTED AN OFFENSE THAT WOULD BE A CRIME IF COMMITTED BY AN ADULT.

SUBRULE (A) PROVIDES THAT IF THE JUVENILE LEAVES THAT DETENTION WITHOUT AUTHORITY, ON APPREHENSION THE JUVENILE MAY BE CONFINED WITHOUT THE RIGHT TO BAIL.

UNDER SUBRULE (B), IF NO NEW PETITION IS FILED, THE COURT IS TO HOLD A DETENTION HEARING WITHIN 48 HOURS.

SUBRULE (C) COVERS NOTICE AND THE RIGHT TO ADVICE REGARDING

REPRESENTATION BY AN ATTORNEY.

Rule 3.950 Waiver of Jurisdiction

- (A) Authority. Only a judge assigned to hear cases in the family division of the circuit court of the county where the offense is alleged to have been committed may waive jurisdiction pursuant to MCL 712A.4.
- (B) Definition. As used in this rule, "felony" means an offense punishable by imprisonment for more than one year or an offense designated by law as a felony.
- (C) Motion by Prosecuting Attorney. A motion by the prosecuting attorney requesting that the family division waive its jurisdiction to a court of general criminal jurisdiction must be in writing and must clearly indicate the charges and that if the motion is granted the juvenile will be prosecuted as though an adult.
 - (1) A motion to waive jurisdiction of the juvenile must be filed within 14 days after the petition has been authorized to be filed. Absent a timely motion and good cause shown, the juvenile shall no longer be subject to waiver of jurisdiction on the charges.
 - (2) A copy of the motion seeking waiver must be personally served on the juvenile and the parent, guardian, or legal custodian of the juvenile, if their addresses or whereabouts are known or can be determined by the exercise of due diligence.
- (D) Hearing Procedure. The waiver hearing consists of two phases. Notice of the date, time, and place of the hearings may be given either on the record directly to the juvenile or to the attorney for the juvenile, the prosecuting attorney, and all other parties, or in writing, served on each individual.
 - (1) First Phase. The first-phase hearing is to determine whether there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony, and that there is probable cause to believe that the juvenile who is 14 years of age or older committed the offense.
 - (a) The probable cause hearing shall be commenced within 28 days after the filing of the petition unless adjourned for good cause.
 - (b) At the hearing, the prosecuting attorney has the burden to present legally admissible evidence to establish each element of the offense and to establish probable cause that the juvenile committed the offense.
 - (c) The court need not conduct the first phase of the waiver hearing, if:

- (i) the court has found the requisite probable cause at a hearing under MCR 3.935(D)(1), provided that at the earlier hearing only legally admissible evidence was used to establish probable cause that the offense was committed and probable cause that the juvenile committed the offense; or
 - (ii) the juvenile, after being informed by the court on the record that the probable cause hearing is equivalent to and held in place of preliminary examination in district court, waives the hearing. The court must determine that the waiver of hearing is freely, voluntarily, and understandingly given and that the juvenile knows there will be no preliminary examination in district court if the court waives jurisdiction.
- (2) Second Phase. If the court finds the requisite probable cause at the first-phase hearing, or if there is no hearing pursuant to subrule (D)(1)(c), the second-phase hearing shall be held to determine whether the interests of the juvenile and the public would best be served by granting the motion. However, if the juvenile has been previously subject to the general criminal jurisdiction of the circuit court under MCL 712A.4 or 600.606, the court shall waive jurisdiction of the juvenile to the court of general criminal jurisdiction without holding the second-phase hearing.
 - (a) The second-phase hearing shall be commenced within 28 days after the conclusion of the first phase, or within 35 days after the filing of the petition if there was no hearing pursuant to subrule (D)(1)(c), unless adjourned for good cause.
 - (b) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply to the second phase of the waiver hearing.
 - (c) The prosecuting attorney has the burden of establishing by a preponderance of the evidence that the best interests of the juvenile and the public would be served by waiver.
 - (d) The court, in determining whether to waive the juvenile to the court having general criminal jurisdiction, shall consider and make findings on the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:
 - (i) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;
 - (ii) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

- (iii) the juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;
 - (iv) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;
 - (v) the adequacy of the punishment or programming available in the juvenile justice system;
 - (vi) the dispositional options available for the juvenile.
- (e) In determining whether to waive the juvenile to the court having general criminal jurisdiction, the court may also consider any stipulation by the defense to a finding that the best interests of the juvenile and the public support a waiver.

(E) Grant of Waiver Motion.

- (1) If the court determines that it is in the best interests of the juvenile and public to waive jurisdiction over the juvenile, the court must:
 - (a) Enter a written order granting the motion to waive jurisdiction and transferring the matter to the appropriate court having general criminal jurisdiction for arraignment of the juvenile on an information.
 - (b) Make findings of fact and conclusions of law forming the basis for entry of the waiver order. The findings and conclusions may be incorporated in a written opinion or stated on the record.
 - (c) Advise the juvenile, orally or in writing, that
 - (i) the juvenile is entitled to appellate review of the decision to waive jurisdiction,
 - (ii) the juvenile must seek review of the decision in the Court of Appeals within 21 days of the order to preserve the appeal of right, and
 - (iii) if the juvenile is financially unable to retain an attorney, the court will appoint one to represent the juvenile on appeal.
 - (d) The court shall send, without cost, a copy of the order and a copy of the written opinion or transcript of the court's findings and conclusions, to the court having general criminal jurisdiction.
- (2) Upon the grant of a waiver motion, a juvenile must be transferred to the adult criminal justice system and is subject to the same procedures used for adult criminal defendants.

Juveniles waived pursuant to this rule are not required to be kept separate and apart from adult prisoners.

- (F) Denial of Waiver Motion. If the waiver motion is denied, the court shall make written findings or place them on the record. A transcript of the court's findings or, if a written opinion is prepared, a copy of the written opinion must be sent to the prosecuting attorney and the juvenile, or juvenile's attorney, upon request. If the juvenile is detained and the trial of the matter in the family division has not started within 28 days after entry of the order denying the waiver motion, and the delay is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted, unless the juvenile is being detained on another matter.
- (G) Psychiatric Testimony.
- (1) A psychiatrist, psychologist, or certified social worker who conducts a court-ordered examination for the purpose of a waiver hearing may not testify at a subsequent criminal proceeding involving the juvenile without the juvenile's written consent.
 - (2) The juvenile's consent may only be given:
 - (a) in the presence of an attorney representing the juvenile or, if no attorney represents the juvenile, in the presence of a parent, guardian, or legal custodian;
 - (b) after the juvenile has had an opportunity to read the report of the psychiatrist, psychologist, or certified social worker; and
 - (c) after the waiver decision is rendered.
 - (3) Consent to testimony by the psychiatrist, psychologist, or certified social worker does not waive the juvenile's privilege against self-incrimination.

NOTE: MCR 3.950 CORRESPONDS TO FORMER RULE 5.950.

NEW SUBRULE (A) MAKES CLEAR THAT ONLY A JUDGE ASSIGNED TO THE FAMILY DIVISION OF CIRCUIT COURT MAY WAIVE JURISDICTION UNDER MCL 712A.4.

Rule 3.951 Initiating Designated Proceedings

- (A) Prosecutor-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition designating the case for trial in the same manner as an adult.

(1) Time for Arraignment.

- (a) If the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. The court may adjourn the arraignment for up to 7 days to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.
- (b) If the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured.

(2) Procedure.

- (a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile.
- (b) The court shall read the allegations in the petition and advise the juvenile on the record in plain language:
 - (i) of the right to an attorney pursuant to MCR 3.915(A)(1);
 - (ii) of the right to trial by judge or jury on the allegations in the petition;
 - (iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;
 - (iv) of the right to have a preliminary examination within 14 days;
 - (v) that the case has been designated for trial in the same manner as an adult and, if the prosecuting attorney proves that there is probable cause to believe an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult; and
 - (vi) of the maximum possible prison sentence and any mandatory minimum sentence required by law.
- (c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:

- (i) determine if fingerprints must be taken as provided by MCR 3.936;
 - (ii) schedule a preliminary examination within 14 days before a judge other than the judge who would conduct the trial
 - (iii) if the juvenile is in custody or custody is requested, determine whether to detain or release the juvenile as provided in MCR 3.935(C).
- (d) If the juvenile is in custody or custody is requested, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present.
- (3) Amendment of Petition. If a petition submitted by the prosecuting attorney alleging a specified juvenile violation did not include a designation of the case for trial as an adult:
 - (a) The prosecuting attorney may, by right, amend the petition to designate the case during the preliminary hearing.
 - (b) The prosecuting attorney may request leave of the court to amend the petition to designate the case no later than the pretrial hearing or, if there is no pretrial hearing, at least 21 days before trial, absent good cause for further delay. The court may permit the prosecuting attorney to amend the petition to designate the case as the interests of justice require.
- (B) Court-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition charging an offense other than a specified juvenile violation and requests the court to designate the case for trial in the same manner as an adult.
 - (1) Time for Arraignment.
 - (a) If the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. The court may adjourn the arraignment for up to 7 days to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.
 - (b) If the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured.
 - (2) Procedure.
 - (a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a

parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile.

- (b) The court shall read the allegations in the petition, and advise the juvenile on the record in plain language:
 - (i) of the right to an attorney pursuant to MCR 3.915(A)(1);
 - (ii) of the right to trial by judge or jury on the allegations in the petition;
 - (iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;
 - (iv) of the right to have a designation hearing within 14 days;
 - (v) of the right to have a preliminary examination within 14 days after the case is designated if the juvenile is charged with a felony or offense for which an adult could be imprisoned for more than one year;
 - (vi) that if the case is designated by the court for trial in the same manner as an adult and, if a preliminary examination is required by law, the prosecuting attorney proves that there is probable cause to believe that an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult;
 - (vii) of the maximum possible prison sentence and any mandatory minimum sentence required by law.
- (c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:
 - (i) determine if fingerprints must be taken as provided by MCR 3.936;
 - (ii) schedule a designation hearing within 14 days before a judge other than the judge who would conduct the trial;
 - (iii) if the juvenile is in custody or custody is requested, determine whether to detain or release the juvenile as provided in MCR 3.935(C).
- (d) If the juvenile is in custody or custody is requested, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present.

- (3) Amendment of Petition. If a petition submitted by the prosecuting attorney alleging an offense other than a specified juvenile violation did not include a request that the court designate the case for trial as an adult:
- (a) The prosecuting attorney may, by right, amend the petition to request the court to designate the case during the preliminary hearing.
 - (b) The prosecuting attorney may request leave of the court to amend the petition to request the court to designate the case no later than the pretrial hearing or, if there is no pretrial hearing, at least 21 days before trial, absent good cause for further delay. The court may permit the prosecuting attorney to amend the petition to request the court to designate the case as the interests of justice require.

NOTE: MCR 3.951 CORRESPONDS TO FORMER RULE 5.951. THE RULE IS REORGANIZED TO ELIMINATE UNNECESSARY REPETITION, BUT IS NOT CHANGED IN SUBSTANCE.

Rule 3.952 Designation Hearing

- (A) Time. The designation hearing shall be commenced within 14 days after the arraignment, unless adjourned for good cause.
- (B) Notice.
- (1) A copy of the petition or a copy of the petition and separate written request for court designation must be personally served on the juvenile and the juvenile's parent, guardian, or legal custodian, if the address or whereabouts of the juvenile's parent, guardian, or custodian is known or can be determined by the exercise of due diligence.
 - (2) Notice of the date, time, and place of the designation hearing must be given to the juvenile, the juvenile's parent, guardian, or legal custodian, the attorney for the juvenile, if any, and the prosecuting attorney. The notice may be given either orally on the record or in writing, served on each individual by mail, or given in another manner reasonably calculated to provide notice.
- (C) Hearing Procedure.
- (1) Evidence. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.
 - (2) Burden of Proof. The prosecuting attorney has the burden of proving by a preponderance of the evidence that the best interests of the juvenile and the public would be served by designation.

- (3) Factors to be Considered. In determining whether to designate the case for trial in the same manner as an adult, the court must consider all the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile's prior delinquency record than to the other factors:
- (a) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;
 - (b) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;
 - (c) the juvenile's prior record of delinquency, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;
 - (d) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;
 - (e) the adequacy of the punishment or programming available in the juvenile justice system; and
 - (f) the dispositional options available for the juvenile.

(D) Grant of Request for Court Designation.

- (1) If the court determines that it is in the best interests of the juvenile and the public that the juvenile be tried in the same manner as an adult in the family division of the circuit court, the court must:
 - (a) Enter a written order granting the request for court designation and
 - (i) schedule a preliminary examination within 14 days if the juvenile is charged with a felony or an offense for which an adult could be imprisoned for more than one year, or
 - (ii) schedule the matter for trial or pretrial hearing if the juvenile is charged with a misdemeanor.
 - (b) Make findings of fact and conclusions of law forming the basis for entry of the order designating the petition. The findings and conclusions may be incorporated in a written opinion or stated on the record.

- (E) Denial of Request for Designation. If the request for court designation is denied, the court shall make written findings or place them on the record. Further proceedings shall be conducted pursuant to MCR 3.941-3.944.

NOTE: MCR 3.952 CORRESPONDS TO FORMER RULE 5.952.

Rule 3.953 Preliminary Examination in Designated Cases

- (A) Requirement. A preliminary examination must be held only in designated cases in which the juvenile is alleged to have committed a felony or an offense for which an adult could be imprisoned for more than one year.
- (B) Waiver. The juvenile may waive the preliminary examination if the juvenile is represented by an attorney and the waiver is made and signed by the juvenile in open court. The judge shall find and place on the record that the waiver was freely, understandingly, and voluntarily given.
- (C) Combined Hearing. The preliminary examination may be combined with a designation hearing provided that the Michigan Rules of Evidence, except as otherwise provided by law, apply only to the preliminary examination phase of the combined hearing.
- (D) Time. The preliminary examination must commence within 14 days of the arraignment in a prosecutor-designated case or within 14 days after court-ordered designation of a petition, unless the preliminary examination was combined with the designation hearing.
- (E) Procedure. The preliminary examination must be conducted in accordance with MCR 6.110.
- (F) Findings.
 - (1) If the court finds there is probable cause to believe that the alleged offense was committed and probable cause to believe the juvenile committed the offense, the court may schedule the matter for trial or a pretrial hearing.
 - (2) If the court does not find there is probable cause to believe that the alleged offense was committed or does not find there is probable cause to believe the juvenile committed the offense, the court shall dismiss the petition, unless the court finds there is probable cause to believe that a lesser included offense was committed and probable cause to believe the juvenile committed that offense.
 - (3) If the court finds there is probable cause to believe that a lesser included offense was committed and probable cause to believe the juvenile committed that offense, the court may, as provided in MCR 3.952, further determine whether the case should be

designated as a case in which the juvenile should be tried in the same manner as an adult. If the court designates the case following the determination of probable cause under this subrule, the court may schedule the matter for trial or a pretrial hearing.

- (G) Confinement. If the court has designated the case and finds probable cause to believe that a felony or an offense for which an adult could be imprisoned for more than one year has been committed and probable cause to believe that the juvenile committed the offense, the judge may confine the juvenile in the county jail pending trial. If the juvenile is under 17 years of age, the juvenile may be confined in jail only if the juvenile can be separated by sight and sound from adult prisoners and if the sheriff has approved the confinement.

NOTE: MCR 3.953 CORRESPONDS TO FORMER RULE 5.953.

Rule 3.954 Trial of Designated Cases

Trials of designated cases are governed by subchapter 6.400, except for MCR 6.402(A). The court may not accept a waiver of trial by jury until after the juvenile has been offered an opportunity to consult with a lawyer. Pleas in designated cases are governed by subchapter 6.300.

NOTE: MCR 3.954 CORRESPONDS TO FORMER RULE 5.954.

SUBCHAPTER 6.300 IS MADE APPLICABLE TO PLEAS IN DESIGNATED CASES.

Rule 3.955 Sentencing or Disposition in Designated Cases

- (A) Determining Whether to Sentence or Impose Disposition. If a juvenile is convicted under MCL 712A.2d, sentencing or disposition shall be made as provided in MCL 712A.18(1)(n) and the Crime Victim's Rights Act, MCL 780.751 *et seq.*, if applicable. In deciding whether to enter an order of disposition, or impose or delay imposition of sentence, the court shall consider all the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

- (1) the seriousness of the alleged offense in terms of community protection, including but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;
- (2) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the

offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

- (3) the juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;
 - (4) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;
 - (5) the adequacy of the punishment or programming available in the juvenile justice system;
 - (6) the dispositional options available for the juvenile.
- (B) Burden of Proof. The court shall enter an order of disposition unless the court determines that the best interests of the public would be served by sentencing the juvenile as an adult. The prosecuting attorney has the burden of proving by a preponderance of the evidence that, on the basis of the criteria in subrule (A), it would be in the best interests of the public to sentence the juvenile as an adult.
- (C) Sentencing. If the court determines that the juvenile should be sentenced as an adult, either initially or following a delayed imposition of sentence, the sentencing hearing shall be held in accordance with the procedures set forth in MCR 6.425.
- (D) Delayed Imposition of Sentence. If the court determines that the juvenile should be sentenced as an adult, the court may, in its discretion, enter an order of disposition delaying imposition of sentence and placing the juvenile on probation on such terms and conditions as it considers appropriate, including ordering any disposition under MCL 712A.18. A delayed sentence may be imposed in accordance with MCR 3.956.
- (E) Disposition Hearing. If the court does not determine that the juvenile should be sentenced as an adult, the court shall hold a dispositional hearing and comply with the procedures set forth in MCR 3.943.

NOTE: MCR 3.955 CORRESPONDS TO FORMER RULE 5.955.

A REFERENCE TO THE CRIME VICTIM'S RIGHTS ACT, MCL 780.751 *ET SEQ.*, IS ADDED IN SUBRULE (A).

Rule 3.956 Review Hearings; Probation Violation

- (A) Review Hearings in Delayed Imposition of Sentence Cases.

- (1) When Required. If the court entered an order of disposition delaying imposition of sentence, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety.

- (a) Time of Hearing.

- (i) Annual Review. The court shall conduct an annual review of the probation, including, but not limited to, the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in placement. In conducting the review, the court must examine any report prepared under MCL 803.223, and any report prepared by the officer or agency supervising probation. The court may order changes in the juvenile's probation on the basis of the review including, but not limited to, imposition of sentence.
 - (ii) Review on Request of Institution or Agency. If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has extended jurisdiction, any time before the juvenile becomes 21 years of age.
 - (iii) Mandatory Review. The court shall schedule a review hearing to be held within 42 days before the juvenile attains the age of 19, unless adjourned for good cause.
 - (iv) Final Review. The court shall conduct a final review of the juvenile's probation not less than 91 days before the end of the probation period.

- (b) Notice of Hearing. Notice of the hearing must be given at least 14 days before the hearing to

- (i) the prosecuting attorney;
 - (ii) the agency or the superintendent of the institution or facility to which the juvenile has been committed;
 - (iii) the juvenile; and
 - (iv) if the address or whereabouts are known, the parent, guardian, or legal custodian of the juvenile,

The notice must clearly indicate that the court may extend jurisdiction over the juvenile or impose sentence and must advise the juvenile and the parent, guardian, or legal custodian of the juvenile that the juvenile has a right to an attorney.

- (2) Appointment of Attorney. The court must appoint an attorney to represent the juvenile unless an attorney has been retained. The court may assess the cost of providing an attorney as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.
- (3) Evidence; Commitment Report. The court may consider the commitment report prepared as provided in MCL 803.225 and any report prepared upon the court's order by the officer or agency supervising probation.
- (4) Burden of Proof; Findings.
 - (a) Before the court may continue jurisdiction over the juvenile or impose sentence, the prosecuting attorney must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply. In making the determination, the court must consider the following factors:
 - (i) the extent and nature of the juvenile's participation in education, counseling, or work programs;
 - (ii) the juvenile's willingness to accept responsibility for prior behavior;
 - (iii) the juvenile's behavior in the current placement;
 - (iv) the juvenile's prior record, character, and physical and mental maturity;
 - (v) the juvenile's potential for violent conduct as demonstrated by prior behavior;
 - (vi) the recommendation of the institution, agency, or facility charged with the juvenile's care for the juvenile's release or continued custody;
 - (vii) any other information the prosecuting attorney or the juvenile submit.
 - (b) Before the court may impose a sentence at the final review hearing, the court must determine that the best interests of the public would be served by the imposition of a sentence provided by law for an adult offender. In making the determination, the court must consider the following factors, in addition to the criteria specified in subrule (4)(a):
 - (i) the effect of treatment on the juvenile's rehabilitation;
 - (ii) whether the juvenile is likely to be dangerous to the public if released;
 - (iii) the best interests of the public welfare and the protection of public security.

- (5) Sentencing credit. If a sentence of imprisonment is imposed, the juvenile shall receive credit for the time served on probation.

(B) Violation of Probation in Delayed Imposition of Sentence Cases.

- (1) Subsequent Conviction. If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation.
- (2) Other Violations of Probation. If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation other than as provided in subrule (B)(1), the court may impose sentence or may order any of the following for the juvenile:
 - (a) A change in placement.
 - (b) Community service.
 - (c) Substance abuse counseling.
 - (d) Mental health counseling.
 - (e) Participation in a vocational-technical program.
 - (f) Incarceration in the county jail for not more than 30 days if the present county jail facility would meet all requirements under federal law and regulations for housing juveniles, and if the court has consulted with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile. If the juvenile is under 17 years of age, the juvenile must be placed in a room or ward out of sight and sound from adult prisoners.
 - (g) Other participation or performance as the court considers necessary.
- (3) Hearing. The probation violation hearing must be conducted pursuant to MCR 3.944(C).
- (4) Sentencing Credit. If a sentence of imprisonment is imposed, the juvenile must receive credit for the time served on probation.

NOTE: MCR 3.956 CORRESPONDS TO FORMER RULE 5.956.

Rule 3.961 Initiating Child Protective Proceedings

(A) Form. Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition.

(B) Content of Petition. A petition must contain the following information, if known:

- (1) The child's name, address, and date of birth.
- (2) The names and addresses of:
 - (a) the child's mother and father,
 - (b) the parent, guardian, legal custodian, or person who has custody of the child, if other than a mother or father,
 - (c) the nearest known relative of the child, if no parent, guardian, or legal custodian can be found, and
 - (d) any court with prior continuing jurisdiction.
- (3) The essential facts that constitute an offense against the child under the Juvenile Code.
- (4) A citation to the section of the Juvenile Code relied on for jurisdiction.
- (5) The child's membership or eligibility for membership in an American Indian tribe or band, if any, and the identity of the tribe.
- (6) The type of relief requested. A request for removal of the child or a parent or for termination of parental rights at the initial disposition must be specifically stated.
- (7) The information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending.

NOTE: MCR 3.961 CORRESPONDS TO FORMER RULE 5.961.

SUBRULE (B)(6) REQUIRES THAT A REQUEST FOR REMOVAL OF A CHILD OR PARENT, OR FOR TERMINATION OF PARENTAL RIGHTS, BE SPECIFICALLY STATED IN THE PETITION.

Rule 3.962 Preliminary Inquiry

- (A) Purpose. When a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition.
- (B) Action by Court. A preliminary inquiry need not be conducted on the record or in the presence of the parties. At the preliminary inquiry, the court may:
 - (1) Deny authorization of the petition.
 - (2) Refer the matter to alternative services.
 - (3) Authorize the filing of the petition if it contains the information required by MCR 3.961(B), and there is probable cause to believe that one or more of the allegations is true. For the purpose of this subrule, probable cause may be established with such information and in such a manner as the court deems sufficient.

NOTE: MCR 3.962 CORRESPONDS TO FORMER RULE 5.962.

SUBRULE (B) PROVIDES THAT THE PRELIMINARY INQUIRY NEED NOT BE CONDUCTED ON THE RECORD OR IN THE PRESENCE OF THE PARTIES.

Rule 3.963 Protective Custody of Child

- (A) Taking Custody Without Court Order. An officer may without court order remove a child from the child's surroundings and take the child into protective custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered.
- (B) Court-Ordered Custody.
 - (1) The court may order an officer or other person to immediately take a child into protective custody when, after presentment to the court of a petition, a judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. The court may also include in such an order authorization to enter specified premises to remove the child.

- (2) The order must indicate that the judge or referee has determined that continuation in the home is contrary to the welfare of the child and must state the basis for that determination.
 - (3) The court shall inquire whether a member of the child's immediate or extended family is available to take custody of the child pending preliminary hearing, whether there has been a central registry clearance, and whether a criminal history check has been initiated.
- (C) Arranging for Court Appearance. An officer or other person who takes a child into protective custody must:
- (1) immediately attempt to notify the child's parent, guardian, or legal custodian of the protective custody;
 - (2) inform the parent, guardian, or legal custodian of the date, time, and place of the preliminary hearing scheduled by the court;
 - (3) immediately bring the child to the court for preliminary hearing, or immediately contact the court for instructions regarding placement pending preliminary hearing;
 - (4) if the court is not open, contact the person designated under MCR 3.934(B)(2) for permission to place the child pending preliminary hearing;
 - (5) ensure that the petition is prepared and submitted to the court;
 - (6) prepare a custody statement similar to the statement required for detention of a juvenile as provided in MCR 3.934(A)(4) and submit it to the court.

NOTE: MCR 3.963 CORRESPONDS TO FORMER RULE 5.963.

THE REVISIONS SUBSTITUTE “PROTECTIVE” FOR “TEMPORARY” CUSTODY.

SUBRULE (B)(2) ADDS A REQUIREMENT THAT THERE BE A SHOWING THAT CONTINUATION OF THE CHILD’S RESIDENCE IN THE HOME WOULD BE CONTRARY TO THE CHILD’S WELFARE. THIS IS RELATED TO FEDERAL STATUTES AND IMPLEMENTING REGULATIONS. SEE 45 CFR 1356.21(c), (d).

Rule 3.965 Preliminary Hearing

(A) Time for Preliminary Hearing.

- (1) Child in Protective Custody. The preliminary hearing must commence no later than 24 hours after the child has been taken into protective custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), unless adjourned for good cause shown, or the child must be released.
- (2) Severely Physically Injured or Sexually Abused Child. When the Family Independence Agency submits a petition in cases in which the child has been severely physically injured, as that term is defined in MCL 722.628(3)(c), or sexually abused, and subrule (A)(1) does not apply, the preliminary hearing must commence no later than 24 hours after the agency submits a petition or on the next business day following the submission of the petition.

(B) Procedure.

- (1) The court must determine if the parent, guardian, or legal custodian has been notified, and if the lawyer-guardian ad litem for the child is present. The preliminary hearing may be adjourned for the purpose of securing the appearance of an attorney, parent, guardian, or legal custodian or may be conducted in the absence of the parent, guardian, or legal custodian if notice has been given or if the court finds that a reasonable attempt to give notice was made.
- (2) The child's lawyer-guardian ad litem must be present to represent the child at the preliminary hearing. The court may make temporary orders for the protection of the child pending the appearance of an attorney or pending the completion of the preliminary hearing. The court must direct that the lawyer-guardian ad litem for the child receive a copy of the petition.
- (3) If the respondent is present, the court must assure that the respondent has a copy of the petition. The court must read the allegations in the petition in open court, unless waived.
- (4) The court shall determine if the petition should be dismissed or the matter referred to alternate services. If the court so determines the court must release the child. Otherwise, the court must continue the hearing.
- (5) The court must advise the respondent of the right to the assistance of an attorney at the preliminary hearing and any subsequent hearing pursuant to MCR 3.915(B)(1)(a).
- (6) The court must advise the respondent of the right to trial on the allegations in the petition and that the trial may be before a referee unless a demand for a jury or judge is filed pursuant to MCR 3.911 or 3.912.
- (7) The court shall allow the respondent an opportunity to deny or admit the allegations and make a statement of explanation.

- (8) The court must inquire whether the child is subject to the continuing jurisdiction of another court and, if so, which court.
 - (9) The court must shall inquire if the child or either parent is a member of any American Indian tribe or band. If the child is a member, of if a parent is a tribal member and the child is eligible for membership in the tribe, the court must determine the identity of the child's tribe, notify the tribe or band, and follow the procedures set forth in MCR 3.980.
 - (10) The court may adjourn the hearing for up to 14 days to secure the attendance of witnesses or for other good cause shown. If the preliminary hearing is adjourned, the court may make temporary orders for the placement of the child when necessary to assure the immediate safety of the child, pending the completion of the preliminary hearing and subject to subrules (C) and (D).
 - (11) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the filing of the petition and, if authorized, the placement of the child pending trial. The court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b). The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent that such privileges are abrogated by MCL 722.631.
 - (12) If the court authorizes the filing of the petition, the court:
 - (a) may release the child to a parent, guardian, or legal custodian and may order such reasonable terms and conditions believed necessary to protect the physical health or mental well-being of the child; or
 - (b) may order placement of the child after making the determinations specified in subrules (C) and (D), if those determinations have not previously been made.
- (C) Pretrial Placement; Contrary to the Welfare Determination.
- (1) Placement; Proofs. If the child was not released under subrule (B), the court shall receive evidence, unless waived, to establish that the criteria for placement set forth in subrule 3.965(C)(2) are present. The respondent shall be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proofs to counter the admitted evidence.
 - (2) Criteria. If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child placed in the most family-like setting available consistent with the child's needs.
 - (3) Findings. If placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home. If the "contrary to the welfare of the child" finding is

placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be on the basis of hearsay evidence that possesses adequate indicia of trustworthiness.

- (4) Record Checks; Home Study. If the child has been placed in a relative's home,
 - (a) the court may order the Family Independence Agency to report the results of a criminal record check and central registry clearance of the residents of the home to the court before, or within 7 days after, the placement, and
 - (b) the court must order the Family Independence Agency to perform a home study with a copy to be submitted to the court not more than 30 days after the placement.
- (5) No Right to Bail. No one has the right to post bail in a protective proceeding for the release of a child in the custody of the court.
- (6) Parenting Time or Visitation.
 - (a) Unless the court suspends parenting time pursuant to MCL 712A.19b(4), or unless the child has a guardian or legal custodian, the court must permit each parent frequent parenting time with a child in placement unless parenting time, even if supervised, may be harmful to the child.
 - (b) If the child was living with a guardian or legal custodian, the court must determine what, if any, visitation will be permitted with the guardian or legal custodian.
- (7) Medical Information. Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include:
 - (a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and
 - (b) an order that each of the child's medical providers release the child's medical records.
- (D) Pretrial Placement; Reasonable Efforts Determination. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court.
 - (1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether the agency has made reasonable efforts to prevent the removal of the child. The court must make this determination no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.

- (2) Reasonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that
 - (a) the parent has subjected the child to aggravated circumstances as listed in MCL 712A.19b(3)(k); or
 - (b) the parent has been convicted of:
 - (i) murder of another child of the parent,
 - (ii) voluntary manslaughter of another child of the parent,
 - (iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or
 - (iv) a felony assault that results in serious bodily injury to the child or another child of the parent; or
 - (c) parental rights of the parent with respect to a sibling have been terminated involuntarily.
- (E) Advice; Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties:
 - (1) that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days of the placement;
 - (2) that participation in the initial service plan is voluntary unless otherwise ordered by the court;
 - (3) that the general elements of an initial service plan include:
 - (a) the background of the child and the family,
 - (b) an evaluation of the experiences and problems of the child,
 - (c) a projection of the expected length of stay in foster care, and
 - (d) an identification of specific goals and projected time frames for meeting the goals; and
 - (4) that, on motion of a party, the court will review the initial service plan and may modify the plan if it is in the best interests of the child.

NOTE: MCR 3.965 CORRESPONDS TO FORMER RULE 5.965.

A NEW SUBRULE (A)(2) IS ADDED, PROVIDING THAT IN THE CASE OF A PETITION INVOLVING A CHILD WHO HAS BEEN SEVERELY PHYSICALLY INJURED OR SEXUALLY ABUSED, THE PRELIMINARY HEARING MUST BEGIN NO LATER THAN 24 HOURS AFTER SUBMISSION OF THE PETITION, OR THE NEXT BUSINESS DAY.

SUBRULE (B), REGARDING PROCEDURE AT THE HEARING, IS SUBSTANTIALLY REWRITTEN. SUBRULE (B)(1) PERMITS THE HEARING TO GO FORWARD IN THE ABSENCE OF THE PARENT, GUARDIAN, OR LEGAL CUSTODIAN IF NOTICE HAS BEEN GIVEN OR IF A REASONABLE ATTEMPT TO DO SO WAS MADE.

OTHER PROVISIONS INCLUDE REQUIREMENTS THAT A COPY OF THE PETITION BE PROVIDED TO VARIOUS PERSONS [SUBRULES (B)(2)-(3)]; THAT INQUIRIES BE MADE REGARDING WHETHER THE CHILD IS SUBJECT TO THE JURISDICTION OF ANOTHER COURT AND ABOUT AMERICAN INDIAN TRIBE MEMBERSHIP [SUBRULES (B)(8)-(9)]; AND PROVIDING FOR TEMPORARY ORDERS FOR PLACEMENT OF THE CHILD WHERE THE HEARING IS ADJOURNED [SUBRULE (10)].

SUBRULE (B)(11) PROVIDES THAT THE RULES OF EVIDENCE DO NOT APPLY, EXCEPT THOSE REGARDING PRIVILEGES. HOWEVER, THE PRIVILEGE PROVISION IS QUALIFIED BY INCORPORATION OF MCL 722.631, WHICH ABROGATES CERTAIN PRIVILEGES.

SUBRULE (B)(12) PROVIDES THAT IF A COURT AUTHORIZES THE PETITION, IT MAY ORDER THE CHILD RELEASED TO THE PARENT, GUARDIAN, OR LEGAL CUSTODIAN OR , ON MAKING APPROPRIATE FINDINGS, THE COURT MAY ORDER PLACEMENT OF THE CHILD.

SUBRULES (D) AND (C) ARE SUBSTANTIALLY REWRITTEN. A NUMBER OF THE CHANGES ARE DESIGNED TO COMPLY WITH THE REQUIREMENTS OF 42 USC 671, AND ASSOCIATED REGULATIONS. 45 CFR 1356.21.

SUBRULE (C)(2) WOULD ADD A REQUIREMENT THAT IF THE CHILD IS REMOVED FROM THE HOME, THE CHILD IS TO BE PLACED IN THE MOST FAMILY-LIKE SETTING AVAILABLE, CONSISTENT WITH THE CHILD'S NEEDS. SEE MCL 712A.13a(10).

SUBRULE (C)(4) PROVIDES FOR A CRIMINAL RECORD CHECK AND CENTRAL REGISTRY CLEARANCE, AS WELL AS A FAMILY INDEPENDENCE AGENCY HOME STUDY, IF THE CHILD IS PLACED IN A RELATIVE'S HOME.

SUBRULE (C)(6)(b) PROVIDES FOR VISITATION WITH A GUARDIAN OR LEGAL CUSTODIAN WITH WHOM THE CHILD HAS BEEN LIVING.

SUBRULE (C)(7) REQUIRES THAT AN ORDER PLACING A CHILD IN FOSTER CARE DIRECT THE CHILD'S PARENT OR CUSTODIAN TO PROVIDE THE AGENCY WITH

THE NAME AND ADDRESS OF THE CHILD'S MEDICAL PROVIDERS, AND THE ORDER IS TO DIRECT THE PROVIDERS TO RELEASE MEDICAL RECORDS.

NEW SUBRULE (D) INCLUDES A NUMBER OF PROVISIONS REGARDING THE DETERMINATION WHETHER REASONABLE EFFORTS HAVE BEEN MADE TO AVOID REMOVING THE CHILD FROM THE HOME. EXCEPTIONS ARE CREATED WHERE THE PARENT HAS SUBJECTED THE CHILD TO CERTAIN AGGRAVATING CIRCUMSTANCES LISTED IN MCL 712A.19b(3)(k) OR COMMITTED CERTAIN SERIOUS CRIMES.

Rule 3.966 Other Placement Review Proceedings

(A) Review of Placement Order and Initial Service Plan. On motion of a party, the court must review the custody order, placement order, or the initial service plan, and may modify those orders and plan if it is in the best interest of the child and, if removal from the parent, guardian, or legal custodian is requested, determine whether the conditions in MCR 3.965(C)(2) exist.

(B) Petitions to Review Placement Decisions by Supervising Agency.

(1) General. The court may review placement decisions when all of the following apply:

- (a) a child has been removed from the home;
- (b) the supervising agency has made a placement decision after identifying, locating, and consulting with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to nonrelative foster care;
- (c) the supervising agency has provided written notice of the placement decision;
- (d) a person receiving notice has disagreed with the placement decision and has given the child's lawyer-guardian ad litem written notice of the disagreement within 5 days of the date on which the person receives notice; and
- (e) the child's lawyer-guardian ad litem determines the decision is not in the child's best interest.

(2) Petition for Review. If the criteria in subrule (1) are met, within 14 days after the date of the agency's written placement decision, the child's lawyer-guardian ad litem must file a petition for review.

(3) Hearing on Petition. The court must commence a review hearing on the record within 7

days of the filing of the petition.

(C) Disputes Between Agency and Foster Care Review Board Regarding Change In Placement.

- (1) General. The court must conduct a hearing upon notice from the Foster Care Review Board that, after an investigation, it disagrees with a proposed change in placement by the agency of a child who is not a permanent ward of the Michigan Children's Institute.
- (2) Procedure.
 - (a) Time. The court must set the hearing no sooner than 7 days and no later than 14 days after receipt of the notice from the Foster Care Review Board that there is a disagreement regarding a placement change.
 - (b) Notice. The court must provide notice of the hearing date to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.
 - (c) Evidence. The court may hear testimony from the agency and any other interested party. The court may consider any other evidence bearing upon the proposed change in placement. The Rules of Evidence do not apply to a hearing under this rule.
 - (d) Findings. The court must order the continuation or restoration of placement unless the court finds that the proposed change in placement is in the child's best interests.

NOTE: MCR 3.966 IS NEW. HOWEVER, SUBRULE (A) INCLUDES THE PROVISIONS OF FORMER RULE 5.965(C)(8).

SUBRULE (B) SETS FORTH A PROCEDURE FOR REVIEW OF PLACEMENT DECISIONS BY THE SUPERVISING AGENCY. THE REVIEW IS INITIATED BY THE CHILD'S LAWYER-GUARDIAN AD LITEM WHEN CERTAIN CONDITIONS ARE MET.

NEW SUBRULE (C) GOVERNS RESOLUTION OF DISPUTES BETWEEN AN AGENCY AND THE FOSTER CARE REVIEW BOARD REGARDING CHANGES IN PLACEMENT.

Rule 3.971 Pleas of Admission or No Contest

- (A) General. A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have

been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.

(B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

- (1) of the allegations in the petition;
- (2) of the right to an attorney, if respondent is without an attorney;
- (3) that, if the court accepts the plea, the respondent will give up the rights to
 - (a) trial by a judge or trial by a jury,
 - (b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,
 - (c) have witnesses against the respondent appear and testify under oath at the trial,
 - (d) cross-examine witnesses, and
 - (e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;
- (4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

(C) Voluntary, Accurate Plea.

- (1) Voluntary Plea. The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.
- (2) Accurate Plea. The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

NOTE: MCR 3.971 CORRESPONDS TO FORMER RULE 5.971.

SUBRULE (B)(4) PROVIDES THAT A PLEA MAY BE USED AS EVIDENCE IN A

PROCEEDING TO TERMINATE PARENTAL RIGHTS ONLY IF THE RESPONDENT IS A PARENT.

SUBRULE (C)(2) IS MODIFIED TO REFER TO A FINDING THAT THE STATUTORY GROUNDS ALLEGED IN THE PETITION ARE TRUE, RATHER THAN TO A FINDING THAT THE CHILD IS WITHIN THE JURISDICTION OF THE COURT.

Rule 3.972 Trial

(A) Time. If the child is not in placement, the trial must be held within 6 months after the filing of the petition unless adjourned for good cause under MCR 3.923(G). If the child is in placement, the trial must commence as soon as possible, but not later than 63 days after the child is placed by the court unless the trial is postponed:

- (1) on stipulation of the parties;
- (2) because process cannot be completed; or
- (3) because the court finds that the testimony of a presently unavailable witness is needed.

When trial is postponed pursuant to subrule (2) or (3), the court shall release the child to the parent, guardian, or legal custodian unless the court finds that releasing the child to the custody of the parent, guardian, or legal custodian will likely result in physical harm or serious emotional damage to the child.

(B) Preliminary Proceedings.

- (1) The court shall determine that the proper parties are present. The respondent has the right to be present, but the court may proceed in the absence of the respondent provided notice has been served on the respondent. The child may be excused as the court determines the child's interests require.
- (2) The court shall read the allegations in the petition, unless waived.

(C) Evidentiary Matters.

- (1) Evidence; Standard of Proof. Except as otherwise provided in these rules, the rules of evidence for a civil proceeding and the standard of proof by a preponderance of evidence apply at the trial, notwithstanding that the petition contains a request to terminate parental rights.
- (2) Child's Statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as

defined in MCL 330.1100a(20) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(e), (f), (r), or, (s), performed with or on the child by another person may be admitted into evidence through the testimony of the person to whom the statement is made as provided in this subrule.

- (a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.
 - (b) If the child has testified, a statement denying such conduct may be used for impeachment purposes as permitted by the rules of evidence.
 - (c) If the child has not testified, a statement denying such conduct may be admitted to impeach a statement admitted under subrule (2)(a) if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement denying the conduct provide adequate indicia of trustworthiness.
- (D) Recommendation by Lawyer-Guardian ad Litem. At the conclusion of the proofs, the lawyer-guardian ad litem for the child may make a recommendation to the finder of fact regarding whether one or more of the statutory grounds alleged in the petition have been proven.
- (E) Verdict. In a child protective proceeding, the verdict must be whether one or more of the statutory grounds alleged in the petition have been proven.

NOTE: MCR 3.972 CORRESPONDS TO FORMER RULE 5.972.

SUBRULE (A) WOULD EXPRESSLY AUTHORIZE ADJOURNMENT OF A TRIAL FOR GOOD CAUSE IN ACCORDANCE WITH MCR 5.932(G).

SUBRULE (C) REVISES THE PROVISIONS GOVERNING USE OF HEARSAY REGARDING STATEMENTS BY A CHILD UNDER 10 YEARS OF AGE. THE PROVISION IS MADE APPLICABLE TO AN INCAPACITATED INDIVIDUAL UNDER 18 YEARS OF AGE WITH A DEVELOPMENTAL DISABILITY. NEW SUBRULES (2) AND (3) PERMIT USE OF HEARSAY DENYING ABUSE OR NEGLECT FOR IMPEACHMENT.

NEW SUBRULE (D) WOULD PERMIT THE LAWYER-GUARDIAN AD LITEM FOR THE CHILD TO MAKE A RECOMMENDATION REGARDING WHETHER THE STATUTORY GROUNDS ALLEGED HAVE BEEN PROVEN.

NEW SUBRULE (E) SPECIFIES THAT THE VERDICT IS TO ADDRESS WHETHER ONE

OR MORE OF THE STATUTORY GROUNDS ALLEGED IN THE PETITION HAS BEEN PROVEN.

Rule 3.973 Dispositional Hearing

- (A) Purpose. A dispositional hearing is conducted to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that one or more of the statutory grounds alleged in the petition are true.
- (B) Notice. Unless the dispositional hearing is held immediately after the trial, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920.
- (C) Time. The interval, if any, between the trial and the dispositional hearing is within the discretion of the court. When the child is in placement, the interval may not be more than 35 days, except for good cause.
- (D) Presence of Parties.
 - (1) The child may be excused from the dispositional hearing as the interests of the child require.
 - (2) The respondent has the right to be present or may appear through an attorney.
 - (3) The court may proceed in the absence of parties provided that proper notice has been given.
- (E) Evidence; Reports.
 - (1) The Michigan Rules of Evidence do not apply at the initial dispositional hearing, other than those with respect to privileges. However, as provided by MCL 722.631, no assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.
 - (2) All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value. The court shall consider the case service plan and any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom the child is placed. If the agency responsible for the care and supervision of the child recommends not placing the child with the parent, guardian, or legal custodian, the agency shall report in writing what efforts were made to prevent

removal, or to rectify conditions that caused removal, of the child from the home.

- (3) The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making the reports when those individuals are reasonably available.
- (4) Written reports, other than those portions made confidential by law, case service plans, and court orders, including all updates and revisions, shall be available to the foster parent, child caring institution, or relative with whom the child is placed. The foster parents, child caring institution, or relative with whom the child is placed shall not have the right to cross-examine individuals making such reports or the right to controvert such reports beyond the making of a written or oral statement concerning the child as provided in subsection (A)(4)(a).

(F) Dispositional Orders.

- (1) The court shall enter an order of disposition as provided in the Juvenile Code and these rules.
- (2) The court shall not enter an order of disposition until it has examined the case service plan as provided in MCL 712A.18f. The court may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child.
- (3) The court, on consideration of the written report prepared by the agency responsible for the care and supervision of the child pursuant to MCL 712A.18f(1), shall, when appropriate, include a statement in the order of disposition as to whether reasonable efforts were made:
 - (a) to prevent the child's removal from home, or
 - (b) to rectify the conditions that caused the child to be removed from the child's home.
- (4) Medical Information. Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include the following:
 - (a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and
 - (b) an order that each of the child's medical providers release the child's medical records.

(G) Subsequent Review. When the court does not terminate jurisdiction upon entering its dispositional order, it must:

- (1) follow the review procedures in MCR 3.975 for a child in placement, or
- (2) review the progress of a child at home pursuant to the procedures of MCR 3.974(A).

(H) Allegations of Additional Abuse or Neglect.

- (1) Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court are governed by MCR 3.977.
- (2) Where there is no request for termination of parental rights, proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care.

NOTE: MCR 3.973 CORRESPONDS TO SUBRULE (A) OF FORMER RULE 5.973. THE REMAINING PROVISIONS OF FORMER RULE 5.973 ARE RELOCATED TO NEW MCR 3.974 [SUBRULES (D)-(E)], 3.975 [SUBRULE (B)] , AND 3.976 [SUBRULE (C)].

LIKE FORMER MCL 5.973(A)(3), SUBRULE (C)(1) WOULD PERMIT THE CHILD TO BE EXCUSED FROM THE DISPOSITIONAL HEARING, BUT WOULD REMOVE THE CONDITION THAT THE CHILD'S GUARDIAN AD LITEM OR ATTORNEY BE PRESENT. HOWEVER THE PRESENCE OF THE LAWYER-GUARDIAN AD LITEM IS REQUIRED BY OTHER PROVISIONS. SEE MCL 712A.17d(1)(g); MCR 3.915(B)(2).

THE PROVISION OF SUBRULES (E)(1) REGARDING THE MICHIGAN RULES OF EVIDENCE IS MODIFIED TO SAY THAT THEY DO NOT APPLY AT THE *INITIAL* DISPOSITIONAL HEARING. LANGUAGE REGARDING PRIVILEGES IS ALSO ADDED.

NEW SUBRULE (F)(4) WOULD PROVIDE FOR RELEASE OF MEDICAL INFORMATION IN CONNECTION WITH AN ORDER PLACING A CHILD IN FOSTER CARE.

NEW SUBRULES (G) AND (H) DEAL WITH SUBSEQUENT REVIEW AND SUPPLEMENTAL PETITIONS ALLEGING ADDITIONAL ABUSE AND NEGLECT.

Rule 3.974 Post-Dispositional Procedures: Child at Home

(A) Review of Child's Progress.

- 1) General. The court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction. A progress review does not require a hearing.

- (2) Time. The progress of the child must be reviewed no later than 182 days after entry of the original order of disposition if the child remained at home following the initial dispositional hearing. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care.
- (3) Change of Placement. Except as provided in subrule (B), the court may not order a change in the placement of a child solely on the basis of a progress review. If the child over whom the court has retained jurisdiction remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court must conduct a hearing before it may order the placement of the child. Such a hearing must be conducted in the manner provided in MCR 3.975(E).

(B) Emergency Removal.

- (1) General. If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court may order temporary removal of the child to protect the health, safety, or welfare of the child, pending an emergency removal hearing.
- (2) Notice. The court shall ensure that the parties are given notice of the hearing as provided in MCR 3.920 and MCR 3.921.
- (3) Emergency Removal Hearing. If the court orders removal of the child from the parent, guardian, or legal custodian to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D)(2). Unless the child is returned to the parent pending the dispositional review, the court must make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied.
 - (a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must receive a written statement of the reasons for removal and be advised of the following rights:
 - (i) to be represented by an attorney at the dispositional review hearing;
 - (ii) to contest the continuing placement at the dispositional review hearing within 14 days; and
 - (iii) to use compulsory process to obtain witnesses for the dispositional review hearing.
 - (b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent,

guardian, or legal custodian.

- (C) Dispositional Review Hearing; Procedure. If the child is in placement pursuant to subrule (B), the dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown. The hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.

NOTE: NEW MCR 3.974 CORRESPONDS TO SUBRULES (D) AND (E) OF FORMER RULE 5.973.

THE PROVISIONS OF FORMER RULE 5.974, GOVERNING TERMINATION OF PARENTAL RIGHTS, ARE RELOCATED TO NEW MCR 3.977 AND 3.978.

SUBRULE (A)(1) MAKES CLEAR THAT THE COURT'S PROGRESS REVIEW DOES NOT REQUIRE A HEARING.

SUBRULE (B) PERMITS REMOVAL OF THE CHILD TO PROTECT THE CHILD'S HEALTH, SAFETY, OR WELFARE PENDING AN EMERGENCY REMOVAL HEARING. AT SUCH A HEARING, A WRITTEN DETERMINATION OF THE CRITERIA FOR PLACEMENT IS REQUIRED.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

- (A) Dispositional Review Hearings. A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f and court evaluation of the continued need and appropriateness for the child to be in foster care.
- (B) Notice. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR 3.920 and MCR 3.921(B)(2).
- (C) Time. The court must conduct dispositional review hearings at intervals as follows, as long as the child remains in foster care:
- (1) no later than every 91 days following entry of the original order of disposition; or
 - (2) no later than every 182 days after the first permanency planning hearing if the child is subject to a permanent foster family agreement or in a relative placement that is intended to be permanent as provided in MCR 3.976(E)(3).
- (D) Early Review Option. At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next

dispositional review hearing before what would otherwise be the next regularly scheduled dispositional review hearing as provided in subrule (C). In deciding whether to shorten the interval between review hearings, the court shall, among other factors, consider:

- (1) the ability and motivation of the parent, guardian, or legal custodian to make changes needed to provide the child a suitable home environment;
- (2) the reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing.

(E) Procedure. Dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.

(F) Criteria.

- (1) Review of Case Service Plan. The court, in reviewing the progress toward compliance with the case service plan, must consider:
 - (a) the services provided or offered to the child and parent, guardian, or legal custodian of the child;
 - (b) whether the parent, guardian, or legal custodian has benefited from the services provided or offered;
 - (c) the extent of parenting time or visitation, including a determination regarding the reasons either was not frequent or never occurred;
 - (d) the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency;
 - (e) any likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian; and
 - (f) any likely harm to the child if the child is returned to the parent, guardian, or legal custodian.
- (2) Progress Toward Returning Child Home. The court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be,

and to remain, in foster care.

(G) Dispositional Review Orders. The court, following a dispositional review hearing, may:

- (1) order the return of the child home,
- (2) order placement of the child if removal from the parent, guardian, or legal custodian would be appropriate for the welfare of the child,
- (3) change the placement of the child,
- (4) modify the dispositional order,
- (5) modify any part of the case service plan,
- (6) enter a new dispositional order, or
- (7) continue the prior dispositional order.

(H) Returning Child Home Without Dispositional Review Hearing. Unless notice is waived, if not less than 7 days written notice is given to all parties before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.

NOTE: NEW MCR 3.975 CORRESPONDS TO SUBRULE (B) OF FORMER RULE 5.973.

SUBRULE (C) ADJUSTS THE TIMES FOR DISPOSITIONAL REVIEW HEARINGS TO COORDINATE WITH THE MODIFIED PROVISIONS ON PERMANENCY PLANNING HEARINGS IN NEW MCR 5.976 AND RECENT AMENDMENTS OF MCL 712A.19a, 712A.19c.

IN SUBRULE (G), TWO NEW OPTIONS FOR ORDERS FOLLOWING A DISPOSITIONAL REVIEW HEARING ARE ADDED.

Rule 3.976 Permanency Planning Hearings

(A) Permanency Plan. At or before each permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan. At the hearing, the court must review the permanency plan for a child in foster care. The court must determine whether and, if applicable, when:

- (1) the child may be returned to the parent, guardian, or legal custodian;

- (2) a petition to terminate parental rights should be filed;
- (3) the child may be placed in a legal guardianship;
- (4) the child may be permanently placed with a fit and willing relative; or
- (5) the child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed in subrules (1)-(4).

(B) Time.

- (1) An initial permanency planning hearing must be held within 28 days after a petition has been adjudicated and both of the following occur:
 - (a) A court of competent jurisdiction has determined that
 - (i) a parent is found to have abused the child, or a sibling of the child, and the abuse included one or more of the circumstances in MCL 712A.19a(2), or
 - (ii) the parent's rights to another child were terminated involuntarily, and
 - (b) the court has determined that reasonable efforts are not required to reunify the child and the family.
- (2) If subrule (1) does not apply, the court must conduct an initial permanency planning hearing no later than one year after an original petition has been filed. The hearing must not be extended or delayed for reasons such as a change or transfer of staff or workers at the supervising agency.
- (3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning one year after the initial permanency planning hearing. The interval between permanency planning hearings must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing.

(C) Notice. Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights.

(D) Hearing Procedure; Evidence.

- (1) Procedure. Each permanency planning hearing must be conducted by a judge or a

referee. Paper reviews, ex parte hearings, stipulated orders, or other actions that are not open to the participation of (a) the parents of the child, unless parental rights have been terminated; (b) the child, if of appropriate age; and (c) foster parents or preadoptive parents, if any, are not permanency planning hearings.

- (2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the permanency planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing. The parties must be afforded an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(E) Determinations; Permanency Options.

- (1) Determining Whether to Return Child Home. At the conclusion of a permanency planning hearing, the court must order the child returned home unless it determines that the return would cause a substantial risk of harm to the life, the physical health, or the mental well-being of the child. Failure to substantially comply with the case service plan is evidence that the return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.
- (2) Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings, no later than 42 days after the permanency planning hearing, to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights.
- (3) Other Placement Plans. If the court does not return the child to the parent, guardian, or legal custodian and if the agency demonstrates that termination of parental rights is not in the best interest of the child, the court must either
 - (a) continue the placement of the child in foster care for a limited period to be set by the court if the court determines that other permanent placement is not possible, or
 - (b) place the child in foster care on a long-term basis if the court determines that it is in the child's best interests.

NOTE: NEW MCR 3.976 CORRESPONDS TO SUBRULE (C) OF FORMER RULE 5.973. A NUMBER OF THE CHANGES IN ITS PROVISIONS REGARDING PERMANENCY PLANNING HEARINGS ARE DESIGNED TO COMPLY WITH FEDERAL STATUTES AND REGULATIONS. SEE, *E.G.*, 45 CFR 1356.21(b)(2).

SUBRULE (B) SUBSTANTIALLY MODIFIES THE PROVISIONS REGARDING THE TIME FOR PERMANENCY PLANNING HEARINGS. SEE 45 CFR 1356.21(b)(3); MCL 712A.19A(2). IT ALSO INCLUDES LANGUAGE BASED ON MCL 722.954b(1) TO EMPHASIZE THAT EXTENSIONS OF THE HEARING DATE BEYOND THE ONE-YEAR PERIOD ARE NOT TO BE GRANTED BECAUSE OF A CHANGE IN AGENCY STAFF.

SUBRULE (D)(1) MAKES CLEAR THAT CERTAIN KINDS OF REVIEWS ARE NOT CONSIDERED PERMANENCY PLANNING HEARINGS. SEE 45 CFR 1355.20(a).

THE LANGUAGE CHANGES IN SUBRULES (E)(2) AND (3) IS BASED ON MCL 712A.19a(7) AND (8).

Rule 3.977 Termination of Parental Rights

(A) General.

- (1) This rule applies to all proceedings in which termination of parental rights is sought . Proceedings for termination of parental rights involving an Indian child, as defined by 25 USC 1901 *et seq.*, are governed by MCR 3.980 in addition to this rule.
- (2) Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition by:
 - (a) the agency,
 - (b) the child,
 - (c) the guardian, legal custodian, or representative of the child,
 - (d) a concerned person as defined in MCL 712A.19b(6),
 - (e) the state children's ombudsman, or
 - (f) the prosecuting attorney, without regard to whether the prosecuting attorney is representing or acting as a legal consultant to the agency or any other party.
- (3) The burden of proof is on the party seeking by court order to terminate the rights of the respondent over the child. There is no right to a jury determination.

(B) Definition. When used in this rule, unless the context otherwise indicates, "respondent" includes

- (1) the natural or adoptive mother of the child;
- (2) the father of the child as defined by MCR 3.903(A)(7).

"Respondent" does not include other persons to whom legal custody has been given by court order, persons who are acting in the place of the mother or father, or other persons responsible for the control, care, and welfare of the child.

(C) Notice. Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).

(D) Suspension of Parenting Time. If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

(E) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

- (1) the original, or amended, petition contains a request for termination;
- (2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;
- (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:
 - (a) are true, and
 - (b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), or (n);

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule (G)(2), that termination of parental rights is not in the best interests of the child.

(F) Termination of Parental Rights on the Basis of Different Circumstances. The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction.

(1) The court must order termination of the parental rights of a respondent, and must order that additional efforts for reunification of the child with the respondent must not be made, if

(a) the supplemental petition for termination of parental rights contains a request for termination;

(b) at the hearing on the supplemental petition, the court finds on the basis of clear and convincing legally admissible evidence that one or more of the facts alleged in the supplemental petition:

(i) are true; and

(ii) come within MCL 712A.19b(3)(a), (b), (c)(ii), (d), (e), (f), (g), (i), (j), (k), (l), (m), or (n);

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule G(2), that termination of parental rights is not in the best interests of the child.

(2) Time for Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule shall be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(G) Termination of Parental Rights; Other. If the parental rights of a respondent over the child were not terminated pursuant to subrule (E) at the initial dispositional hearing or pursuant to subrule (F) at a hearing on a supplemental petition on the basis of different circumstances, and the child is within the jurisdiction of the court, the court must, if the child is in foster care, or may, if the child is not in foster care, following a dispositional review hearing under MCR 3.975, a progress review hearing under MCR 3.974, or a permanency planning hearing under MCR 3.976, take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3).

(1) Time.

(a) Filing Petition. The supplemental petition for termination of parental rights may be filed at any time after the initial dispositional review hearing, progress review, or permanency planning hearing, whichever occurs first.

(b) Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule must be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties must be afforded an opportunity to examine and controvert written reports so received and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(3) Order. The court must order termination of the parental rights of a respondent and must order that additional efforts for reunification of the child with the respondent must not be made, if the court finds on the basis of clear and convincing evidence admitted pursuant to subrule (G)(2) that one or more facts alleged in the petition

(a) are true, and

(b) come within MCL 712A.19b(3),

unless the court finds by clear and convincing evidence that termination of parental rights to the child is not in the best interest of the child.

(H) Findings.

(1) General. The court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient. If the court does not issue a decision on the record following hearing, it shall file its decision within 28 days after the taking of final proofs, but no later than 70 days after the commencement of the hearing to terminate parental rights.

(2) Denial of Termination. If the court finds that the parental rights of respondent should not be terminated, the court must make findings of fact and conclusions of law.

(3) Order of Termination. An order terminating parental rights under the Juvenile Code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order.

(I) Respondent's Rights Following Termination.

(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

- (a) Respondent is entitled to appellate review of the order.
 - (b) If respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.
 - (c) A request for the assistance of an attorney must be made within 21 days after notice of the order is given. The court must then give a form to the respondent with the instructions (to be repeated on the form) that if respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form).
 - (d) Respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent's name and address as provided in MCL 710.27.
- (2) Appointment of Attorney. If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall enter an order appointing an attorney. In the interest of justice, the court may appoint an attorney where the request is filed untimely.
- (3) Transcripts. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court may, on motion or its own initiative, order transcripts prepared at public expense.
- (J) Review Standard. The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights.

NOTE: MCR 3.977 CORRESPONDS TO FORMER RULE 5.974.

SUBRULE (A)(1) IS AMENDED TO MAKE CLEAR THAT WITH REGARD TO TERMINATION OF PARENTAL RIGHTS INVOLVING AN INDIAN CHILD, IN ADDITION TO SATISFYING THE FEDERAL STANDARD, STATE GROUNDS FOR TERMINATION MUST BE ESTABLISHED. THERE IS A CORRESPONDING CHANGE IN MCR 3.980(D).

NEW SUBRULE (D) AUTOMATICALLY SUSPENDS THE PARENTING TIME OF A PARENT AS TO WHOM A PETITION TO TERMINATE PARENTAL RIGHTS IS FILED. THE COURT CAN REINSTATE PARENTING TIME ON AN APPROPRIATE SHOWING. SEE MCL 712A.19b(4).

SUBRULE (E) MORE SPECIFICALLY STATES THE GROUNDS ON WHICH TERMINATION OF PARENTAL RIGHTS MAY BE ORDERED AT THE FIRST DISPOSITIONAL HEARING.

SUBRULE (F), REGARDING TERMINATION OF PARENTAL RIGHTS ON A SUPPLEMENTAL PETITION ALLEGING DIFFERENT CIRCUMSTANCES, IS MODIFIED TO MORE CLOSELY CORRESPOND TO THE PROCEDURES APPLICABLE TO THE INITIAL TERMINATION HEARING.

SUBRULE (G) IS MODIFIED TO REFLECT CASE LAW HOLDING THAT THE PROVISIONS OF THE RULE AND MCL 712A.19b(1) APPLY BOTH WHERE THE CHILD IS IN FOSTER CARE AND WHERE THE CHILD IS NOT IN FOSTER CARE. SEE *IN RE MARIN*, 198 MICH APP 560 (1993).

SUBRULE (G)(1) CLARIFIES THAT A SUPPLEMENTAL PETITION FOR TERMINATION OF PARENTAL RIGHTS MAY BE FILED AT ANY TIME AFTER THE INITIAL DISPOSITIONAL REVIEW HEARING, PROGRESS REVIEW, OR PERMANENCY PLANNING HEARING.

SUBRULE (G)(2) INCLUDES A PROVISION REGARDING THE APPLICABILITY OF THE RULES OF EVIDENCE, SIMILAR TO THAT FOUND IN A NUMBER OF THE OTHER RULES.

SUBRULE (G)(3) PARALLELS THE STANDARD OF PROOF PROVISIONS OF SUBRULES (E) AND (F). EVEN THOUGH THE GROUNDS FOR TERMINATING PARENTAL RIGHTS ARE ESTABLISHED, THE COURT IS NOT TO ORDER TERMINATION IF THERE IS CLEAR AND CONVINCING EVIDENCE THAT TERMINATION IS NOT IN THE BEST INTERESTS OF THE CHILD. SEE *IN RE TREJO MINORS*, 462 MICH 341, 354-356 (2000).

Rule 3.978 Post-Termination Review Hearings

- (A) Review Hearing Requirement. Unless the child has been placed in a permanent foster family agreement or is placed with a relative and the placement is intended to be permanent, if a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 91 days after the termination of parental rights and at least every 91 days after that hearing to review the child's placement in foster care and the progress toward the child's adoption or other permanent placement, as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan Children's Institute or other agency.
- (B) Notice; Right to be Heard. The foster parents (if any) of a child and any preadoptive parents or relative providing care to the child must be provided with notice of and an opportunity to be heard at each hearing.
- (C) Findings. The court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers

necessary in the best interests of the child.

- (D) Termination of Jurisdiction. The jurisdiction of the court in the child protective proceeding may terminate when a court of competent jurisdiction enters an order terminating the rights of the entity with legal custody and enters an order placing the child for adoption.

NOTE: MCR 3.978 CORRESPONDS TO FORMER RULE 5.974(J), GOVERNING REVIEW HEARINGS AFTER TERMINATION OF PARENTAL RIGHTS. THE PROVISION IS MODIFIED TO CONFORM TO THE SHORTENED TIME LIMIT PROVIDED BY STATUTE. SEE MCL 712A.19c. IT ALSO EXCLUDES FROM REVIEW HEARINGS CASES IN WHICH A CHILD HAS BEEN PLACED UNDER PERMANENT FOSTER FAMILY AGREEMENT, OR PLACED WITH A RELATIVE AND THE PLACEMENT IS INTENDED TO BE PERMANENT. SEE MCL 712A.19(4) DETAILS ARE ADDED REGARDING THE CONDUCT OF THE HEARING.

Rule 3.980 American Indian Children

- (A) Notice; Transfer. If any Indian child as defined by the Indian Child Welfare Act, 25 USC 1901 *et seq.*, is the subject of a protective proceeding or is charged with an offense in violation of MCL 712A.2(a)(2)-(4) or (d), the following procedures shall be used:
- (1) If the Indian child resides on a reservation or is under tribal court jurisdiction at the time of referral, the matter shall be transferred to the tribal court having jurisdiction.
 - (2) If the child does not reside on a reservation, the court shall ensure that the petitioner has given notice of the proceedings to the child's tribe and the child's parents or Indian custodian and, if the tribe is unknown, to the Secretary of the Interior.
 - (3) If the tribe exercises its right to appear in the proceeding and requests that the proceeding be transferred to tribal court, the court shall transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. A perceived inadequacy of the tribal court or tribal services does not constitute good cause to refuse to transfer the case.
- (B) Emergency Removal. An Indian child who resides or is domiciled on a reservation, but is temporarily located off the reservation, must not be removed from a parent or Indian custodian unless the removal is to prevent imminent physical harm to the child. An Indian child not residing or domiciled on a reservation may be temporarily removed if reasonable efforts have been made to prevent removal of the child, and continued placement with the parent or Indian custodian would be contrary to the welfare of the child.
- (C) Removal Hearing. A removal hearing must be completed within 28 days of removal from

the parent or Indian custodian.

(1) Evidence.

- (a) An Indian child must not be removed from a parent or Indian custodian without clear and convincing evidence that services designed to prevent the break up of the Indian family have been furnished to the family and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child.
- (b) Evidence at the removal hearing must include the testimony of expert witnesses who have knowledge about the child-rearing practices of the Indian child's tribe.

(2) The Indian child, if removed from home, must be placed, in descending order of preference, with:

- (a) a member of the child's extended family,
- (b) a foster home licensed, approved, or specified by the child's tribe,
- (c) an Indian foster family licensed or approved by a non-Indian licensing authority,
- (d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

The court may order another placement for good cause shown.

- (D) Termination of Parental Rights. In addition to the required findings under MCR 3.977, the parental rights of a parent of an Indian child must not be terminated unless there is also evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that parental rights should be terminated because continued custody of the child by the parent or Indian custodian will likely result in serious emotional or physical damage to the child.

NOTE: MCR 3.980 CORRESPONDS TO FORMER RULE 5.980.

IN SUBRULE (B), REGARDING TEMPORARY REMOVAL OF AN INDIAN CHILD NOT RESIDING OR DOMICILED ON A RESERVATION, A REQUIREMENT IS ADDED THAT REASONABLE EFFORTS MUST HAVE BEEN MADE TO PREVENT REMOVAL.

SUBRULE (C) (1)(b) REQUIRES THAT THE EVIDENCE AT A REMOVAL HEARING INCLUDE TESTIMONY FROM EXPERT WITNESSES WHO HAVE KNOWLEDGE ABOUT THE CHILD-REARING PRACTICES OF THE TRIBE.

SUBRULE (D) IS MODIFIED TO REQUIRE NOT ONLY THAT THE STANDARD FOR

REMOVAL MANDATED BY FEDERAL LAW BE MET, BUT ALSO THAT THE STATE STANDARDS FOR TERMINATION OF PARENTAL RIGHTS UNDER MCR 5.977 BE SATISFIED.

Rule 3.981 Minor Personal Protection Orders; Issuance; Modification; Recision; Appeal

Procedure for the issuance, dismissal, modification, or recision of minor personal protection orders is governed by subchapter 3.700. Procedure in appeals related to minor personal protection orders is governed by MCR 3.709 and MCR 3.993.

NOTE: MCR 3.981 CORRESPONDS TO FORMER RULE 5.981.

Rule 3.982 Enforcement of Minor Personal Protection Orders

- (A) In General. A minor personal protection order is enforceable under MCL 600.2950(22), (25), 600.2950a(19), (22), 764.15b, and 600.1701 *et seq.* For the purpose of MCR 5.981-5.989, “minor personal protection order” includes a foreign protection order against a minor respondent enforceable in Michigan under MCL 600.2950/.
- (B) Procedure. Unless indicated otherwise in these rules, contempt proceedings for the enforcement of minor personal protection orders where the respondent is under 18 years of age are governed by MCR 3.982-3.989.
- (C) Form of Proceeding. A contempt proceeding brought in a court other than the one that issued the minor personal protection order shall be entitled “In the Matter of Contempt of [Respondent], a minor”. The clerk shall provide a copy of the contempt proceeding to the court that issued the minor personal protection order.

NOTE: MCR 3.982 CORRESPONDS TO FORMER RULE 5.982.

CURRENT SUBRULE (C), CONCERNING SUPPLEMENTAL PETITIONS, IS DELETED.
THE SUBSTANCE OF THOSE PROVISIONS IS INCLUDED IN MCR 5.983(A).

Rule 3.983 Initiation of Contempt Proceedings by Supplemental Petition

- (A) Filing. If a respondent allegedly violates a minor personal protection order, the original petitioner, a law enforcement officer, a prosecuting attorney, a probation officer, or a

caseworker may submit a supplemental petition in writing to have the respondent found in contempt. The supplemental petition must contain a specific description of the facts constituting a violation of the personal protection order. There is no fee for such a petition.

- (B) Scheduling. Upon receiving the supplemental petition, the court must either:
- (1) set a date for a preliminary hearing on the supplemental petition, to be held as soon as practicable, and issue a summons to appear; or
 - (2) issue an order authorizing a peace officer or other person designated by the court to apprehend the respondent.
- (C) Service. If the court sets a date for a preliminary hearing, the petitioner shall serve the supplemental petition and summons on the respondent and, if the relevant addresses are known or are ascertainable upon diligent inquiry, on the respondent's parent or parents, guardian, or custodian. Service must be in the manner provided by MCR 3.920 at least 7 days before the preliminary hearing.
- (D) Order To Apprehend.
- (1) A court order to apprehend the respondent may include authorization to:
 - (a) enter specified premises as required to bring the minor before the court, and
 - (b) detain the minor pending preliminary hearing if it appears there is a substantial likelihood of retaliation or continued violation.
 - (2) Upon apprehending a minor respondent under a court order, the officer shall comply with MCR 3.984(B) and (C).

NOTE: MCR 3.983 CORRESPONDS TO FORMER RULE 5.983.

THE CHANGES IN SUBRULE (A) ARE THE RESULT OF ADDING PROVISIONS FROM FORMER RULE 5.982(C) REGARDING SUPPLEMENTAL PETITIONS.

SUBRULE (B) ADDS A REQUIREMENT OF DILIGENT SEARCH FOR THE ADDRESS OF THE MINOR'S PARENT, GUARDIAN, OR CUSTODIAN.

Rule 3.984 Apprehension of Alleged Violator

- (A) Apprehension; Release to Parent, Guardian, or Custodian. When an officer apprehends a minor for violation of a minor personal protection order without a court order for apprehension and does not warn and release the minor, the officer may accept a written

promise of the minor's parent, guardian, or custodian to bring the minor to court, and release the minor to the parent, guardian, or custodian.

- (B) **Custody; Detention.** When an officer apprehends a minor in relation to a minor personal protection order pursuant to a court order that specifies that the minor is to be brought directly to court; or when an officer apprehends a minor for an alleged violation of a minor personal protection order without a court order, and either the officer has failed to obtain a written promise from the minor's parent, guardian, or custodian to bring the minor to court, or it appears to the officer that there is a substantial likelihood of retaliation or violation by the minor, the officer shall immediately do the following:
- (1) If the whereabouts of the minor's parent or parents, guardian, or custodian is known, inform the minor's parent or parents, guardian, or custodian of the minor's apprehension and of the minor's whereabouts and of the need for the parent or parents, guardian, or custodian to be present at the preliminary hearing;
 - (2) Take the minor
 - (a) before the court for a preliminary hearing, or
 - (b) to a place designated by the court pending the scheduling of a preliminary hearing;
 - (3) Prepare a custody statement for submission to the court including:
 - (a) the grounds for and the time and location of detention, and
 - (b) the names of persons notified and the times of notification, or the reason for failure to notify; and
 - (4) Ensure that a supplemental petition is prepared and filed with the court.
- (C) **Separate Custody.** While awaiting arrival of the parent, guardian, or custodian, appearance before the court, or otherwise, a minor under 17 years of age must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner.
- (D) **Designated Court Person.** The court must designate a judge, referee or other person who may be contacted by the officer taking a minor under 17 into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the minor pending preliminary hearing.
- (E) **Out-of-County Violation.** Subject to MCR 3.985(H), if a minor is apprehended for violation of a minor personal protection order in a jurisdiction other than the jurisdiction where the minor personal protection order was issued, the apprehending jurisdiction may notify the issuing jurisdiction that it may request that the respondent be returned to the issuing

jurisdiction for enforcement proceedings.

NOTE: MCR 3.984 CORRESPONDS TO FORMER RULE 5.984.

Rule 3.985 Preliminary Hearing

(A) Time.

- (1) Commencement. If the respondent was apprehended or arrested for violation of a minor personal protection order or was apprehended or arrested under a court order, and the respondent is taken into court custody or is jailed, the preliminary hearing must commence no later than 24 hours after the minor was apprehended or arrested, excluding Sundays and holidays, as defined in MCR 8.110(D)(2), or the minor must be released. Otherwise, the preliminary hearing must commence as soon as practicable after the apprehension or arrest, or the submission of a supplemental petition.
- (2) General Adjournment. The court may adjourn the hearing for up to 14 days:
 - (a) to secure the attendance of witnesses or the minor's parent, guardian, or custodian, or
 - (b) for other good cause shown.

(B) Procedure.

- (1) The court shall determine whether the parent, guardian, or custodian has been notified and is present. The preliminary hearing may be conducted without a parent, guardian, or custodian provided a guardian ad litem or attorney appears with the minor.
- (2) Unless waived by the respondent, the court shall read the allegations in the supplemental petition, and ensure that the respondent has received written notice of the alleged violation.
- (3) Immediately after the reading of the allegations, the court shall advise the respondent on the record in plain language of the rights to:
 - (a) contest the allegations at a violation hearing;
 - (b) an attorney at every stage in the proceedings, and, if the court determines it might sentence the respondent to jail or place the respondent in secure detention, the fact that the court will appoint an attorney at public expense if the respondent wants one and is financially unable to retain one;

- (c) a nonjury trial and that a referee may be assigned to hear the case unless demand for a judge is filed pursuant to MCR 3.912;
 - (d) have witnesses against the respondent appear at a violation hearing and to question the witnesses;
 - (e) have the court order any witnesses for the respondent's defense to appear at the hearing; and
 - (f) remain silent and to not have that silence used against the respondent, and that any statement by the respondent may be used against the respondent.
- (4) The court must decide whether to authorize the filing of the supplemental petition and proceed formally, or to dismiss the supplemental petition.
- (5) The respondent must be allowed an opportunity to deny or otherwise plead to the allegations. If the respondent wishes to enter a plea of admission or of nolo contendere, the court shall follow MCR 3.986.
- (6) If the court authorizes the filing of the supplemental petition, the court must:
- (a) set a date and time for the violation hearing, or, if the court accepts a plea of admission or no contest, either enter a dispositional order or set the matter for dispositional hearing; and
 - (b) either release the respondent pursuant to subrule (E) or order detention of the respondent as provided in subrule (F).
- (C) Notification. Following the preliminary hearing, if the respondent denies the allegations in the supplemental petition, the court must:
- (1) notify the prosecuting attorney of the scheduled violation hearing;
 - (2) notify the respondent, respondent's attorney, if any, and respondent's parents, guardian, or custodian of the scheduled violation hearing and direct the parties to appear at the hearing and give evidence on the charge of contempt.
- Notice of hearing must be given by personal service or ordinary mail at least 7 days before the violation hearing, unless the respondent is detained, in which case notice of hearing must be served at least 24 hours before the hearing.
- (D) Failure to Appear. If the respondent was notified of the preliminary hearing and fails to appear for the preliminary hearing, the court may issue an order in accordance with MCR 3.983(D) authorizing a peace officer or other person designated by the court to apprehend the respondent.

- (1) If the respondent is under 17 years of age, the court may order the respondent detained pending a hearing on the apprehension order; if the court releases the respondent it may set bond for the respondent's appearance at the violation hearing.
- (2) If the respondent is 17 years of age, the court may order the respondent confined to jail pending a hearing on the apprehension order. If the court releases the respondent it must set bond for the respondent's appearance at the violation hearing.

(E) Release of Respondent.

- (1) Subject to the conditions set forth in subrule (F), the respondent may be released, with conditions, to a parent, guardian, or custodian pending the resumption of the preliminary hearing or pending the violation hearing after the court considers available information on
 - (a) family ties and relationships,
 - (b) the minor's prior juvenile delinquency or minor personal protection order record, if any,
 - (c) the minor's record of appearance or nonappearance at court proceedings,
 - (d) the violent nature of the alleged violation,
 - (e) the minor's prior history of committing acts that resulted in bodily injury to others,
 - (f) the minor's character and mental condition,
 - (g) the court's ability to supervise the minor if placed with a parent or relative,
 - (h) the likelihood of retaliation or violation of the order by the respondent, and
 - (i) any other factors indicating the minor's ties to the community, the risk of nonappearance, and the danger to the respondent or the original petitioner if the respondent is released.
- (2) Bail procedure is governed by MCR 3.935(F).

(F) Detention Pending Violation Hearing.

- (1) Conditions. A minor shall not be removed from the parent, guardian, or custodian pending violation hearing or further court order unless:
 - (a) probable cause exists to believe the minor violated the minor personal protection

order; and

- (b) at the preliminary hearing the court finds one or more of the following circumstances to be present:
 - (i) there is a substantial likelihood of retaliation or continued violation by the minor who allegedly violated the minor personal protection order;
 - (ii) there is a substantial likelihood that if the minor is released to the parent, with or without conditions, the minor will fail to appear at the next court proceeding; or
 - (iii) detention pending violation hearing is otherwise specifically authorized by law.
- (2) Waiver. A minor respondent in custody may waive the probable cause phase of a detention determination only if the minor is represented by an attorney.
- (3) Evidence; Findings. At the preliminary hearing the minor respondent may contest the sufficiency of evidence to support detention by cross-examination of witnesses, presentation of defense witnesses, or by other evidence. The court shall permit the use of subpoena power to secure attendance of defense witnesses. A finding of probable cause under subrule (F)(1)(a) may be based on hearsay evidence which possesses adequate guarantees of trustworthiness.
- (4) Type of Detention. The detained minor must be placed in the least restrictive environment that will meet the needs of the minor and the public, and conforms to the requirements of MCL 712A.15 and 712A.16.
- (G) Findings. At the preliminary hearing the court must state the reasons for its decision to release or detain the minor on the record or in a written memorandum.
- (H) Out-of-County Violation. When a minor is apprehended for violation of a minor personal protection order in a jurisdiction other than the one that issued the personal protection order, and the apprehending jurisdiction conducts the preliminary hearing, if it has not already done so, the apprehending jurisdiction must immediately notify the issuing jurisdiction that the latter may request that the respondent be returned to the issuing jurisdiction for enforcement proceedings.

NOTE: MCR 3.985 CORRESPONDS TO FORMER RULE 5.985.

Rule 3.986 Pleas of Admission or No Contest

- (A) Capacity. A minor may offer a plea of admission or of no contest to the violation of a minor personal protection order with the consent of the court. The court shall not accept a plea to a violation unless the court is satisfied that the plea is accurate, voluntary, and understanding.
- (B) Qualified Pleas. The court may accept a plea of admission or of no contest conditioned on preservation of an issue for appellate review.
- (C) Support of Plea by Parent, Guardian, Custodian. The court shall inquire of the parents, guardian, custodian, or guardian ad litem whether there is any reason the court should not accept the plea tendered by the minor. Agreement or objection by the parent, guardian, custodian, or guardian ad litem to a plea of admission or of no contest by a minor must be placed on the record if that person is present.
- (D) Plea Withdrawal. The court may take a plea of admission or of no contest under advisement. Before the court accepts the plea, the minor may withdraw the plea offer by right. After the court accepts a plea, the court has discretion to allow the minor to withdraw the plea.

NOTE: MCR 3.986 CORRESPONDS TO FORMER RULE 5.986.

Rule 3.987 Violation Hearing

- (A) Time. Upon completion of the preliminary hearing the court shall set a date and time for the violation hearing if the respondent denies the allegations in the supplemental petition. The violation hearing must be held within 72 hours of apprehension, excluding Sundays and holidays, as defined in MCR 8.110(D)(2), if the respondent is detained. If the respondent is not detained the hearing must be held within 21 days.
- (B) Prosecution After Apprehension. If a criminal contempt proceeding is commenced under MCL 764.15b, the prosecuting attorney shall prosecute the proceeding unless the petitioner retains an attorney to prosecute the criminal contempt proceeding. If the prosecuting attorney determines that the personal protection order was not violated or that it would not be in the interest of justice to prosecute the criminal contempt violation, the prosecuting attorney need not prosecute the proceeding.
- (C) Preliminary Matters.
 - (1) The court must determine whether the appropriate parties have been notified and are present.
 - (a) The respondent has the right to be present at the violation hearing along with parents, guardian, or custodian, and guardian ad litem and attorney.

- (b) The court may proceed in the absence of a parent properly noticed to appear, provided the respondent is represented by an attorney.
 - (c) The original petitioner has the right to be present at the violation hearing.
 - (2) The court must read the allegations contained in the supplemental petition, unless waived.
 - (3) Unless an attorney appears with the minor, the court must inform the minor of the right to the assistance of an attorney and that, if the court determines that it might sentence the respondent to jail or place the respondent in secure detention, the court will appoint an attorney at public expense if the respondent wants one and is financially unable to retain one. If the juvenile requests to proceed without the assistance of an attorney, the court must advise the minor of the dangers and disadvantages of self-representation and determine whether the minor is literate and competent to conduct the defense.
- (D) Jury. There is no right to a jury trial.
- (E) Conduct of the Hearing. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses.
- (F) Evidence; Burden of Proof. The rules of evidence apply to both criminal and civil contempt proceedings. The petitioner or the prosecuting attorney has the burden of proving the respondent's guilt of criminal contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by a preponderance of the evidence.
- (G) Judicial Findings. At the conclusion of the hearing, the court must make specific findings of fact, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

NOTE: MCR 3.987 CORRESPONDS TO FORMER RULE 5.987.

Rule 3.988 Dispositional Hearing

- (A) Time. The time interval between the entry of judgment finding a violation of a minor personal protection order and disposition, if any, is within the court's discretion, but may not be more than 35 days. When the minor is detained, the interval may not be more than 14 days, except for good cause.
- (B) Presence of Respondent and Petitioner.

- (1) The respondent may be excused from part of the dispositional hearing for good cause, but the respondent must be present when the disposition is announced.
- (2) The petitioner has the right to be present at the dispositional hearing.

(C) Evidence.

- (1) At the dispositional hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied on to the extent of its probative value, even though such evidence may not be admissible at the violation hearing.
- (2) The respondent, or the respondent's attorney, and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available.
- (3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(D) Dispositions.

- (1) If a minor respondent at least 17 years of age pleads or is found guilty of criminal contempt, the court may impose a sentence of incarceration of up to 93 days and may impose a fine of not more than \$500.
- (2) If a minor respondent pleads or is found guilty of civil contempt, the court shall
 - (a) impose a fine or imprisonment as specified in MCL 600.1715 and 600.1721, if the respondent is at least 17 years of age.
 - (b) subject the respondent to the dispositional alternatives listed in MCL 712A.18, if the respondent is under 17 years of age.
- (3) In addition to the sentence, the court may impose other conditions to the minor personal protection order.

NOTE: MCR 3.988 CORRESPONDS TO FORMER RULE 5.988.

Rule 3.989 Supplemental Dispositions

When it is alleged that a minor placed on probation for the violation of a minor personal protection order has violated a condition of probation, the court shall follow the procedures for supplemental disposition as provided in MCR 3.944.

NOTE: MCR 3.989 CORRESPONDS TO FORMER RULE 5.989.

Rule 3.991 Review of Referee Recommendations

(A) General.

- (1) Before signing an order based on a referee's recommended findings and conclusions, a judge of the court shall review the recommendations if requested by a party in the manner provided by subrule (B).
- (2) If no such request is filed within the time provided by subrule (B)(3), the court may enter an order in accordance with the referee's recommendations.
- (3) Nothing in this rule prohibits a judge from reviewing a referee's recommendation before the expiration of the time for requesting review and entering an appropriate order.
- (4) After the entry of an order under subrule (A)(3), a request for review may not be filed. Reconsideration of the order is by motion for rehearing under MCR 3.992.

(B) Form of Request; Time. A party's request for review of a referee's recommendation must:

- (1) be in writing,
- (2) state the grounds for review,
- (3) be filed with the court within 7 days after the conclusion of the inquiry or hearing or within 7 days after the issuance of the referee's written recommendations, whichever is later, and
- (4) be served on the interested parties by the person requesting review at the time of filing the request for review with the court. A proof of service must be filed.

(C) Response. A party may file a written response within 7 days after the filing of the request for review.

(D) Prompt Review; No Party Appearance Required. Absent good cause for delay, the judge shall consider the request within 21 days after it is filed if the minor is in placement or detention. The judge need not schedule a hearing to rule on a request for review of a

referee's recommendations.

(E) Review Standard. The judge must enter an order adopting the referee's recommendation unless:

- (1) the judge would have reached a different result had he or she heard the case; or
- (2) the referee committed a clear error of law, which
 - (a) likely would have affected the outcome, or
 - (b) cannot otherwise be considered harmless.

(F) Remedy. The judge may adopt, modify, or deny the recommendation of the referee, in whole or in part, on the basis of the record and the memorandums prepared, or may conduct a hearing, whichever the court in its discretion finds appropriate for the case.

(G) Stay. The court may stay any order or grant bail to a detained juvenile, pending its decision on review of the referee's recommendation.

NOTE: MCR 3.991 CORRESPONDS TO FORMER RULE 5.991.

SUBRULE (A) IS AMENDED TO PROVIDE FOR ENTRY OF AN ORDER BASED ON THE REFEREE'S RECOMMENDATION IF NO REQUEST FOR REVIEW IS FILED WITHIN 7 DAYS. HOWEVER, THE COURT HAS THE OPTION OF REVIEWING THE RECOMMENDATION AND ENTERING AN APPROPRIATE ORDER EARLIER. ONCE THE COURT HAS ENTERED AN ORDER, THE REVIEW PROCEDURE IS NO LONGER AVAILABLE, AND A PARTY MUST FILE A MOTION FOR REHEARING UNDER MCR 3.992.

NEW SUBRULE (B)(4) IS ADDED, EXPLICITLY REQUIRING SERVICE OF THE REQUEST FOR REVIEW ON INTERESTED PARTIES.

NEW SUBRULE (C) SETS THE TIME FOR A PARTY TO FILE A WRITTEN RESPONSE TO A REQUEST FOR REVIEW.

THE REVIEW STANDARD OF SUBRULE (E) IS MODIFIED TO REFER TO ADOPTING THE REFEREE'S RECOMMENDATION, RATHER THAN DENIAL OF THE REQUEST FOR REVIEW.

Rule 3.992 Rehearings; New Trial

- (A) Time and Grounds. Except for the case of a juvenile tried as an adult in the family division of the circuit court for a criminal offense, a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial. The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case.
- (B) Notice. All parties must be given notice of the motion in accordance with Rule 3.920.
- (C) Response by Parties. Any response by parties must be in writing and filed with the court and served on the opposing parties within 7 days after notice of the motion.
- (D) Procedure. The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case.
- (E) Hearings. The court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings and, at the discretion of the court, may be assigned to the person who conducted the hearing. The court shall state the reasons for its decision on the motion on the record or in writing.
- (F) Stay. The court may stay any order, or grant bail to a detained juvenile, pending a ruling on the motion.

NOTE: MCR 3.992 CORRESPONDS TO FORMER RULE 5.992.

IN SUBRULE (A), THE LANGUAGE REGARDING THE TIME FOR REQUESTING A NEW TRIAL OR REHEARING IS MODIFIED TO REFER TO THE DATE OF THE ORDER RESULTING FROM THE HEARING.

Rule 3.993 Appeals

- (A) The following orders are appealable to the Court of Appeals by right:
 - (1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home,
 - (2) an order terminating parental rights,
 - (3) any order required by law to be appealed to the Court of Appeals, and

(4) any final order.

(B) All orders not listed in subrule (A) are appealable to the Court of Appeals by leave.

(C) Procedure; Delayed Appeals.

(1) Applicable Rules. Except as modified by this rule, chapter 7 of the Michigan Court Rules governs appeals from the family division of the circuit court.

(2) Delayed Appeals; Termination of Parental Rights. The Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits, or if filed more than 63 days after entry of an order denying reconsideration or rehearing.

NOTE: MCR 3.993 CORRESPONDS TO FORMER RULE 5.993.

FORMER SUBRULE 5.933(C)(2), WHICH REQUIRED THE USE OF A MINOR'S INITIALS IN PUBLISHED OPINIONS, IS DELETED.

Subchapter 6.900 Rules Applicable to Juveniles Charged With Specified Offenses Subject to the Jurisdiction of the Circuit or District Court

Rule 6.901 Applicability

(A) Precedence. The rules in this subchapter take precedence over, but are not exclusive of, the rules of procedure applicable to criminal actions against adult offenders.

(B) Scope. The rules apply to criminal proceedings in the district court and the circuit court concerning a juvenile against whom the prosecuting attorney has authorized the filing of a criminal complaint charging a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court. The rules do not apply to a person charged solely with an offense in which the family division has waived jurisdiction pursuant to MCL 712A.4.

NOTE: THE CHANGES IN MCR 6.901 (B) CONFORM THE TERMINOLOGY TO STATUTORY AMENDMENTS, MCL 712A.2(a)(1), 764.1f(2), AND THE ELIMINATION OF THE RECORDER'S COURT FOR THE CITY OF DETROIT. SEE MCL 600.9931.

Rule 6.903 Definitions

When used in this subchapter, unless the context otherwise indicates:

- (A) "Commitment review hearing" includes a hearing as required by MCL 769.1 to decide whether the jurisdiction of the court shall continue over a juvenile who was placed on juvenile probation and committed to state wardship.
- (B) "Commitment review report" means a report on a juvenile committed to state wardship for use at a commitment review hearing prepared by the Family Independence Agency pursuant to MCL 803.225 (§ 5 of the Juvenile Facilities Act).
- (C) "Court" means the circuit court as provided in MCL 600.606, but does not include the family division of the circuit court.
- (D) "Family division" means the family division of the circuit court.
- (E) "Juvenile" means a person 14 years of age or older, who is subject to the jurisdiction of the court for having allegedly committed a specified juvenile violation on or after the person's 14th birthday and before the person's 17th birthday.
- (F) "Juvenile sentencing hearing" means a hearing conducted by the court following a criminal conviction to determine whether the best interests of the juvenile and of the public would be served:
 - (1) by retaining jurisdiction over the juvenile, placing the juvenile on juvenile probation, and committing the juvenile to a state institution or agency as a state ward, as provided in MCL 769.1; or
 - (2) by imposing sentence as provided by law for an adult offender.
- (G) "Juvenile facility" means an institution or facility operated by the family division of the circuit court, a state institution or agency described in the Youth Rehabilitation Services Act, MCL 803.301 *et seq.*, or a county facility or institution operated as an agency of the county other than a facility designed or used to incarcerate adults.
- (H) "Specified Juvenile Violation" means one or more of the following offenses allegedly committed by a juvenile in which the prosecuting attorney has authorized the filing of a criminal complaint and warrant instead of proceeding in the family division of the circuit court :
 - (1) burning a dwelling house, MCL 750.72;
 - (2) assault with intent to commit murder, MCL 750.83;

- (3) assault with intent to maim, MCL 750.86;
 - (4) assault with intent to rob while armed, MCL 750.89;
 - (5) attempted murder, MCL 750.91;
 - (6) first-degree murder, MCL 750.316;
 - (7) second-degree murder, MCL 750.317;
 - (8) kidnaping, MCL 750.349;
 - (9) first-degree criminal sexual conduct, MCL 750.520b;
 - (10) armed robbery, MCL 750.529;
 - (11) carjacking, MCL 750.529a;
 - (12) bank, safe, or vault robbery, MCL 750.531;
 - (13) assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon;
 - (14) first-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon;
 - (15) escape or attempted escape from a medium-security or high-security juvenile facility operated by the Family Independence Agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency, MCL 750.186a;
 - (16) possession of [MCL 333.7403(2)(a)(i)] or manufacture, delivery, or possession with intent to manufacture or deliver of 650 grams or more of a schedule 1 or 2 controlled substance [MCL 333.7401(2)(a)(i)];
 - (17) any attempt, MCL 750.92; solicitation, MCL 750.157b; or conspiracy, MCL 750.157a; to commit any of the offenses listed in subrules (1) through (16);
 - (18) any lesser-included offense of an offense listed in subrules (1) through (17) if the juvenile is charged with a specified juvenile violation;
 - (19) any other violation arising out of the same transaction if the juvenile is charged with one of the offenses listed in subrules (1)-(17).
- (I) “Dangerous Weapon” means one of the following:
- (1) a loaded or unloaded firearm, whether operable or inoperable;

- (2) a knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon;
 - (3) an object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon, or carried or possessed for use as a weapon;
 - (4) an object or device that is used or fashioned in a manner leading a person to believe the object or device is an object or device described in subsections (a) through (c).
- (I) "Magistrate" means a judge of the district court or a municipal court as defined in MCL 761.1(f).
 - (J) "Progress report" means the report on a juvenile in state wardship prepared by the Family Independence Agency for the court as required by MCL 803.223 (§ 3 of the Juvenile Facilities Act) and by these rules.
 - (K) "Social report" means the written report on a juvenile for use at the juvenile sentencing hearing prepared by the Family Independence Agency as required by MCL 803.224 (§ 4 of the Juvenile Facilities Act).
 - (L) "State wardship" means care and control of a juvenile until the juvenile's 21st birthday by an institution or agency within or under the supervision of the Family Independence Agency as provided in the Youth Rehabilitation Services Act, MCL 803.301 *et seq.*, while the juvenile remains under the jurisdiction of the court on the basis of a court order of juvenile probation and commitment as provided in MCL 769.1.

NOTE: THE AMENDMENTS OF MCR 6.903 ADJUST SEVERAL DEFINITIONS TO CONFORM TO STATUTORY CHANGES ABOLISHING THE RECORDER'S COURT FOR THE CITY OF DETROIT; CREATING THE FAMILY DIVISION OF THE CIRCUIT COURT; REDUCING THE AGE OF JUVENILES SUBJECT TO THE PROVISIONS TO 14 YEARS; AND DEFINING "SPECIFIED JUVENILE VIOLATIONS" AND "DANGEROUS WEAPON." SEE, *E.G.*, MCL 712A.2(a)(1); 764.1f; 600.606; 600.1001; 600.9931.

Rule 6.905 Assistance of Attorney

- (A) Advice of Right. If the juvenile is not represented by an attorney, the magistrate or court shall advise the juvenile at each stage of the criminal proceedings of the right to the assistance of an attorney. If the juvenile has waived the right to an attorney, the court at later proceedings must reaffirm that the juvenile continues to not want an attorney.
- (B) Court-Appointed Attorney. Unless the juvenile has a retained attorney, or has waived the right to an attorney, the magistrate or the court must appoint an attorney to represent the

juvenile.

- (C) Waiver of Attorney. The magistrate or court may permit a juvenile to waive representation by an attorney if:
- (1) an attorney is appointed to give the juvenile advice on the question of waiver;
 - (2) the magistrate or the court finds that the juvenile is literate and is competent to conduct a defense;
 - (3) the magistrate or the court advises the juvenile of the dangers and of the disadvantages of self-representation;
 - (4) the magistrate or the court finds on the record that the waiver is voluntarily and understandingly made; and
 - (5) the court appoints standby counsel to assist the juvenile at trial and at the juvenile sentencing hearing.
- (D) Cost. The court may assess cost of legal representation, or part thereof, against the juvenile or against a person responsible for the support of the juvenile, or both. The order assessing cost shall not be binding on a person responsible for the support of the juvenile unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first class mail to the person's last known address.

NOTE: MCR 6.905 IS UNCHANGED FROM THE CURRENT RULE.

Rule 6.907 Arraignment on Complaint and Warrant

- (A) Time. When the prosecuting attorney authorizes the filing of a complaint and warrant charging a juvenile with a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court, the juvenile in custody must be taken to the magistrate for arraignment on the charge. The prosecuting attorney must make a good-faith effort to notify the parent of the juvenile of the arraignment. The juvenile must be released if arraignment has not commenced:
- (1) within 24 hours of the arrest of the juvenile; or
 - (2) within 24 hours after the prosecuting attorney authorized the complaint and warrant during special adjournment pursuant to MCR 3.935(A)(3), provided the juvenile is being detained in a juvenile facility.

(B) Temporary Detention Pending Arraignment. If the prosecuting attorney has authorized the filing of a complaint and warrant charging a specified juvenile violation instead of approving the filing of a petition the family division of the circuit court, a juvenile may, following apprehension, be detained pending arraignment:

- (1) in a juvenile facility operated by the county;
- (2) in a regional juvenile detention facility operated by the state; or
- (3) in a facility operated by the family division of the circuit court with the consent of the family division or an order of a court as defined in MCR 6.903(C).

If no juvenile facility is reasonably available and if it is apparent that the juvenile may not otherwise be safely detained, the magistrate may, without a hearing, authorize that the juvenile be lodged pending arraignment in a facility used to incarcerate adults. The juvenile must be kept separate from adult prisoners as required by law.

(C) Procedure. At the arraignment on the complaint and warrant:

- (1) The magistrate shall determine whether a parent, guardian, or an adult relative of the juvenile is present. Arraignment may be conducted without the presence of a parent, guardian, or adult relative provided the magistrate appoints an attorney to appear at arraignment with the juvenile or provided an attorney has been retained and appears with the juvenile.
- (2) The magistrate shall set a date for the juvenile's preliminary examination within the next 14 days, less time given and used by the prosecuting attorney under special adjournment pursuant to MCR 3.935(A)(3), up to three days credit. The magistrate shall inform the juvenile and the parent, guardian, or adult relative of the juvenile, if present, of the preliminary examination date. If a parent, guardian, or an adult relative is not present at the arraignment, the court shall direct the attorney for the juvenile to advise a parent or guardian of the juvenile of the scheduled preliminary examination.

NOTE: THE CHANGES IN MCR 6.907 CONFORM THE TERMINOLOGY TO STATUTORY AMENDMENTS DEFINING "SPECIFIED JUVENILE VIOLATION." SEE MCL 712A.2(a)(1); 764.1f; 600.606.

Rule 6.909 Releasing or Detaining Juveniles Before Trial or Sentencing

(A) Bail; Detention.

- (1) Bail. Except as provided in subrule (2) the magistrate or court must advise the juvenile

of a right to bail as provided for an adult accused. The magistrate or the court may order a juvenile released to a parent or guardian on the basis of any lawful condition, including that bail be posted.

(2) Detention Without Bail. If the proof is evident or if the presumption is great that the juvenile committed the offense, the magistrate or the court may deny bail:

- (a) to a juvenile charged with first-degree murder, second-degree murder, or
- (b) to a juvenile charged with first-degree criminal sexual conduct, or armed robbery,
 - (i) who is likely to flee, or
 - (ii) who clearly presents a danger to others.

(B) Place of Confinement.

(1) Juvenile Facility. Except as provided in subrule (B)(2) and in MCR 6.907(B), a juvenile charged with a crime and not released must be placed in a juvenile facility while awaiting trial and, if necessary, sentencing, rather than being placed in a jail or similar facility designed and used to incarcerate adult prisoners.

(2) Jailing of Juveniles; Restricted. On motion of a prosecuting attorney or a superintendent of a juvenile facility in which the juvenile is detained, the magistrate or court may order the juvenile confined in a jail or similar facility designed and used to incarcerate adult prisoners upon a showing that

- (a) the juvenile's habits or conduct are considered a menace to other juveniles; or
- (b) the juvenile may not otherwise be safely detained in a juvenile facility.

(3) Family Division Operated Facility. The juvenile shall not be placed in an institution operated by the family division of the circuit court except with the consent of the family division or on order of a court as defined in MCR 6.903(C).

(4) Separate Custody of Juvenile. The juvenile in custody or detention must be maintained separately from the adult prisoners or adult accused as required by MCL 764.27a.

(C) Speedy Trial. Within 7 days of the filing of a motion, the court shall release a juvenile who has remained in detention while awaiting trial for more than 91 days to answer for the specified juvenile violation unless the trial has commenced. In computing the 91-day period, the court is to exclude delays as provided in MCR 6.004(C)(1) through (6) and the time required to conduct the hearing on the motion.

NOTE: THE CHANGES IN MCR 6.909 CONFORM THE TERMINOLOGY TO STATUTORY AMENDMENTS DEFINING “SPECIFIED JUVENILE VIOLATION.” SEE MCL 712A.2(a)(1); 764.1f; 600.606..

Rule 6.911 Preliminary Examination

- (A) Waiver. The juvenile may waive a preliminary examination if the juvenile is represented by an attorney and the waiver is made and signed by the juvenile in open court. The magistrate shall find and place on the record that the waiver was freely, understandingly, and voluntarily given.
- (B) Transfer to Family Division of Circuit Court. If the magistrate, following preliminary examination, finds that there is no probable cause to believe that a specified juvenile violation occurred or that there is no probable cause to believe that the juvenile committed the specified juvenile violation, but that some other offense occurred that if committed by an adult would constitute a crime, and that there is probable cause to believe that the juvenile committed that offense, the magistrate shall transfer the matter to the family division of the circuit court in the county where the offense is alleged to have been committed for further proceedings. If the court transfers the matter to the family division, a transcript of the preliminary examination shall be sent to the family division without charge upon request.

NOTE: THE CHANGES IN MCR 6.911 CONFORM THE TERMINOLOGY TO STATUTORY AMENDMENTS DEFINING “SPECIFIED JUVENILE VIOLATION.” SEE MCL 712A.2(a)(1); 764.1f; 600.606.

Rule 6.931 Juvenile Sentencing Hearing

- (A) General. If the juvenile has been convicted of an offense listed in MCL 769.1(1)(a)-(l), the court must sentence the juvenile in the same manner as an adult. Unless a juvenile is required to be sentenced in the same manner as an adult, a judge of a court having jurisdiction over a juvenile shall conduct a juvenile sentencing hearing unless the hearing is waived as provided in subrule (B). At the conclusion of the juvenile sentencing hearing, the court shall determine whether to impose a sentence against the juvenile as though an adult offender or whether to place the juvenile on juvenile probation and commit the juvenile to state wardship pursuant to MCL 769.1b.
- (B) No Juvenile Sentencing Hearing; Consent. The court need not conduct a juvenile sentencing hearing if the prosecuting attorney, the juvenile, and the attorney for the juvenile, consent that it is not in the best interest of the public to sentence the juvenile as though an adult offender. If the juvenile sentence hearing is waived, the court shall not impose a sentence as

provided by law for an adult offender. The court must place the juvenile on juvenile probation and commit the juvenile to state wardship.

- (C) Notice of Juvenile Sentencing Hearing Following Verdict. If a juvenile sentencing hearing is required, the prosecuting attorney, the juvenile, and the attorney for the juvenile must be advised on the record immediately following conviction of the juvenile by a guilty plea or verdict of guilty that a hearing will be conducted at sentencing, unless waived, to determine whether to sentence the juvenile as an adult or to place the juvenile on juvenile probation and commit the juvenile to state wardship as though a delinquent. The court may announce the scheduled date of the hearing. On request, the court shall notify the victim of the juvenile sentencing hearing.
- (D) Review of Reports. The court must give the prosecuting attorney, the juvenile, and the attorney for the juvenile, an opportunity to review the presentence report and the social report before the juvenile sentencing hearing. The court may exempt information from the reports as provided in MCL 771.14 and 771.14a.
- (E) Juvenile Sentencing Hearing Procedure.
 - (1) Evidence. At the juvenile sentencing hearing all relevant and material evidence may be received by the court and relied upon to the extent of its probative value, even though such evidence may not be admissible at trial. The rules of evidence do not apply. The court shall receive and consider the presentence report prepared by the probation officer and the social report prepared by the Family Independence Agency.
 - (2) Standard of Proof. The court must sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence, except as provided in subrule (3)(c), that the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to state wardship.
 - (3) Alternative Sentences For Juveniles Convicted of Possession of 650 Grams or More of Schedule 1 or 2 Narcotics or Cocaine. If a juvenile is convicted of a violation or conspiracy to commit a violation of 333.7403(2)(a)(i), the court shall determine whether the best interests of the public would be served by:
 - (a) imposing the sentence provided by law for an adult offender;
 - (b) placing the individual on probation and committing the individual to a state institution or agency as provided in MCL 769.1(3); or
 - (c) imposing a sentence of imprisonment for any term of years, but not less than 25 years, if the court determines by clear and convincing evidence that such a sentence would serve the best interests of the public.

In making its determination, the court shall use the criteria set forth in subrule (4).

- (4) Criteria. The court shall consider the following criteria in determining whether to sentence the juvenile as though an adult offender or whether to place the juvenile on juvenile probation and commit the juvenile to state wardship, giving more weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency:
- (a) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim;
 - (b) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;
 - (c) the juvenile's prior record of delinquency, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;
 - (d) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;
 - (e) the adequacy of the punishment or programming available in the juvenile justice system; and
 - (f) the dispositional options available for the juvenile.
- (5) Findings. The court must make findings of fact and conclusions of law forming the basis for the juvenile probation and commitment decision or the decision to sentence the juvenile as though an adult offender. The findings and conclusions may be incorporated in a written opinion or stated on the record.
- (F) Postjudgment Procedure; Juvenile Probation and Commitment to State Wardship. If the court retains jurisdiction over the juvenile, places the juvenile on juvenile probation, and commits the juvenile to state wardship, the court shall comply with subrules (1) through (11):
- (1) The court shall enter a judgment that includes a provision for reimbursement by the juvenile or those responsible for the juvenile's support, or both, for the cost of care and services pursuant to MCL 769.1(7). An order assessing such cost against a person responsible for the support of the juvenile shall not be binding on the person, unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first class mail to the person's last known address.
 - (2) The court shall advise the juvenile at sentencing that if the juvenile, while on juvenile

probation, is convicted of a felony or a misdemeanor punishable by more than one year's imprisonment, the court must revoke juvenile probation and sentence the juvenile to a term of years in prison not to exceed the penalty that might have been imposed for the offense for which the juvenile was originally convicted.

- (3) The court shall assure that the juvenile receives a copy of the social report.
- (4) The court shall send a copy of the order and a copy of the written opinion or transcript of the findings and conclusions of law to the Family Independence Agency.
- (5) The court shall not place the juvenile on deferred sentencing, as provided in MCL 771.1(2).
- (6) The court shall not place the juvenile on life probation for conviction of a controlled substance violation, as set forth in MCL 771.1(4).
- (7) The five-year limit on the term of probation for an adult felony offender shall not apply.
- (8) The court shall not require as a condition of juvenile probation that the juvenile report to a department of corrections probation officer.
- (9) The court shall not, as a condition of juvenile probation, impose jail time against the juvenile except as provided in MCR 6.933(B)(2).
- (10) The court shall not commit the juvenile to the Department of Corrections for failing to comply with a restitution order.
- (11) The court shall not place the juvenile in a Department of Corrections camp for one year, as otherwise provided in MCL 771.3a(1).

NOTE: MCR 6.931(A) IS MODIFIED TO CONFORM TO THE STATUTE REGARDING OFFENSES FOR WHICH A JUVENILE MUST BE SENTENCED IN THE SAME MANNER AS AN ADULT, MCL 769.1(1), AND PROVIDES FOR A JUVENILE SENTENCING HEARING IN OTHER CASES.

IN SUBRULE (E)(2), THE STANDARD OF PROOF AT THE JUVENILE SENTENCING HEARING IS ESTABLISHED. THE JUVENILE MUST BE SENTENCED AS AN ADULT UNLESS THE COURT DETERMINES THAT THE BEST INTERESTS OF THE PUBLIC WOULD BE SERVED BY PLACING THE JUVENILE ON PROBATION AND COMMITTING THE JUVENILE TO STATE WARDSHIP.

SUBRULE (E)(3) CONTAINS PROVISIONS REGARDING ALTERNATE SENTENCES FOR JUVENILES CONVICTED OF OFFENSES INVOLVING 650 GRAMS OR MORE OF CONTROLLED SUBSTANCES.

SUBRULE (E)(4) REVISES THE CRITERIA THAT THE COURT IS TO CONSIDER IN DECIDING WHETHER TO IMPOSE AN ADULT OR JUVENILE SENTENCE.

Rule 6.933 Juvenile Probation Revocation

(A) General Procedure. When a juvenile, who was placed on juvenile probation and committed to an institution as a state ward, is alleged to have violated juvenile probation, the court shall proceed as provided in MCR 6.445(A) through (F).

(B) Disposition In General.

(1) Certain Criminal Offense Violations.

(a) If the court finds that the juvenile has violated juvenile probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment, the court must revoke the probation of the juvenile and order the juvenile committed to the Department of Corrections for a term of years not to exceed the penalty that could have been imposed for the offense that led to the probation. The court in imposing sentence shall grant credit against the sentence as required by law.

(b) The court may not revoke probation and impose sentence under subrule (B)(1) unless at the original sentencing the court gave the advice, as required by MCR 6.931(F)(2), that subsequent conviction of a felony or a misdemeanor punishable by more than one year's imprisonment would result in the revocation of juvenile probation and in the imposition of a sentence of imprisonment.

(2) Other Violations. If the court finds that the juvenile has violated juvenile probation, other than as provided in subrule (B)(1), the court may order the juvenile committed to the department of corrections as provided in subrule (B)(1), or may order the juvenile continued on juvenile probation and under state wardship, and may order any of the following:

(a) a change of placement,

(b) restitution,

(c) community service,

(d) substance abuse counseling,

(e) mental health counseling,

- (f) participation in a vocational-technical education program,
- (g) incarceration in a county jail for not more than 30 days, and
- (h) any other participation or performance as the court considers necessary.

If the court determines to place the juvenile in jail for up to 30 days, and the juvenile is under 17 years of age, the juvenile must be placed separately from adult prisoners as required by law.

- (3) If the court revokes juvenile probation pursuant to subrule (B)(1), the court must receive an updated presentence report and comply with MCR 6.445(G) before it imposes a prison sentence on the juvenile.

(C) Disposition Regarding Specific Underlying Offenses.

- (1) Controlled Substance Violation Punishable by Mandatory Nonparolable Life Sentence For Adults. A juvenile who was placed on probation and committed to state wardship for manufacture, delivery, or possession with the intent to deliver 650 grams or more of a controlled substance, MCL 333.7401(2)(a)(i), may be resentenced only to a term of years or to a parolable life sentence, following mandatory revocation of probation for commission of a subsequent felony or a misdemeanor punishable by more than one year of imprisonment.
- (2) First-Degree Murder. A juvenile convicted of first-degree murder who violates juvenile probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment may only be sentenced to a term of years, not to nonparolable life.

- (D) Review. The juvenile may appeal as of right from the imposition of a sentence of incarceration after a finding of juvenile probation violation.

NOTE: NEW MCR 6.933(B)(1) SPECIFIES THE CONSEQUENCES OF FAILURE TO GIVE CERTAIN ADVICE TO THE JUVENILE AT THE ORIGINAL SENTENCING REGARDING PROBATION VIOLATION.

SUBRULE (B)(2) IS MODIFIED TO CONFORM TO MCL 771.7(2).

NEW SUBRULE (C) LIMITS THE SENTENCING OPTIONS FOLLOWING PROBATION VIOLATION IN CASES IN WHICH THE UNDERLYING OFFENSE WAS FIRST-DEGREE MURDER OR INVOLVED 650 GRAMS OR MORE OF A CONTROLLED SUBSTANCE.

Rule 6.935 Progress Review of Court-Committed Juveniles

- (A) General. When a juvenile is placed on probation and committed to a state institution or agency, the court retains jurisdiction over the juvenile while the juvenile is on probation and committed to that state institution or agency. The court shall review the progress of a juvenile it has placed on juvenile probation and committed to state wardship.
- (B) Time.
- (1) Semiannual Progress Reviews. The court must conduct a progress review no later than 182 days after the entry of the order placing the juvenile on juvenile probation and committing the juvenile to state wardship. A review shall be made semiannually thereafter as long as the juvenile remains in state wardship.
- (2) Annual Review. The court shall conduct an annual review of the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement.
- (C) Progress Review Report. In conducting these reviews, the court shall examine the progress review report prepared by the Family Independence Agency, covering placement and services being provided the juvenile and the progress of the juvenile, and the court shall also examine the juvenile's annual report prepared under, MCL 803.223 (§ 3 of the Juvenile Facilities Act). The court may order changes in the juvenile's placement or treatment plan including, but not limited to, committing the juvenile to the jurisdiction of the Department of Corrections, on the basis of the review.
- (D) Hearings for Progress and Annual Reviews. Unless the court orders a more restrictive placement or treatment plan, there shall be no requirement that the court hold a hearing when conducting a progress review for a court-committed juvenile pursuant to MCR 6.935(B). However, the court may not order a more physically restrictive change in the level of placement of the juvenile or order more restrictive treatment absent a hearing as provided in MCR 6.937.

NOTE: THE AMENDMENTS OF MCR 6.935 ADD DETAILS REGARDING THE REVIEWS TO BE CONDUCTED FOR JUVENILES WHO HAVE BEEN PLACED ON JUVENILE PROBATION AND COMMITTED TO STATE WARSHIP.

Rule 6.937 Commitment Review Hearing

- (A) Required Hearing Before Age 19 for Court-Committed Juveniles. The court shall schedule and hold, unless adjourned for good cause, a commitment review hearing as nearly as possible to, but before, the juvenile's 19th birthday.
- (1) Notice. The Family Independence Agency or agency, facility, or institution to which the

juvenile is committed, shall advise the court at least 91 days before the juvenile attains age 19 of the need to schedule a commitment review hearing. Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the facility to which the juvenile has been committed, the juvenile, and the parent of the juvenile if the parent's address or whereabouts are known, at least 14 days before the hearing. Notice must clearly indicate that the court may extend jurisdiction over the juvenile until the age of 21. The notice shall include advice to the juvenile and the parent of the juvenile that the juvenile has the right to an attorney.

- (2) Appointment of an Attorney. The court must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained or is waived pursuant to MCR 6.905(C).
- (3) Reports. The state institution or agency charged with the care of the juvenile must prepare a commitment report as required by MCL 769.1b(4) and 803.225(1). The commitment report must contain all of the following, as required by MCL 803.225(1)(a)-(d):
 - (a) the services and programs currently being utilized by, or offered to, the juvenile and the juvenile's participation in those services and programs;
 - (b) where the juvenile currently resides and the juvenile's behavior in the current placement;
 - (c) the juvenile's efforts toward rehabilitation; and
 - (d) recommendations for the juvenile's release or continued custody.

The report created pursuant to MCL 803.223 for the purpose of annual reviews may be combined with a commitment review report.

- (3) Findings; Criteria. Before the court continues the jurisdiction over the juvenile until the age of 21, the prosecutor must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The rules of evidence do not apply. In making the determination, the court must consider the following factors:
 - (a) the extent and nature of the juvenile's participation in education, counseling, or work programs;
 - (b) the juvenile's willingness to accept responsibility for prior behavior;
 - (c) the juvenile's behavior in the current placement;
 - (d) the prior record and character of the juvenile and physical and mental maturity;

- (e) the juvenile's potential for violent conduct as demonstrated by prior behavior;
 - (f) the recommendations of the state institution or agency charged with the juvenile's care for the juvenile's release or continued custody; and
 - (g) other information the prosecuting attorney or the juvenile may submit.
- (B) Other Commitment Review Hearings. The court, on motion of the institution, agency, or facility to which the juvenile is committed, may release a juvenile at any time upon a showing by a preponderance of evidence that the juvenile has been rehabilitated and is not a risk to public safety. The notice provision in subrule (A), other than the requirement that the court clearly indicate that it may extend jurisdiction over the juvenile until the age of 21, and the criteria in subrule (A) shall apply. The rules of evidence shall not apply. The court must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained or the right to counsel waived. The court, upon notice and opportunity to be heard as provided in this rule, may also move the juvenile to a more restrictive placement or treatment program.

NOTE: THE AMENDMENT OF MCR 6.937(A) EMPHASIZES THAT THE REVIEW HEARING IS TO BE HELD AS CLOSE AS POSSIBLE TO, BUT BEFORE, THE JUVENILE'S 19TH BIRTHDAY.

NEW SUBRULE (A)(3) MANDATES THE PREPARATION OF A COMMITMENT REPORT UNDER THE JUVENILE FACILITIES ACT CONTAINING SPECIFIED INFORMATION. SEE MCL 803.225; MCL 769.1b(4).

Rule 6.938 Final Review Hearings

- (A) General. The court must conduct a final review of the juvenile's probation and commitment not less than 3 months before the end of the period that the juvenile is on probation and committed to the state institution or agency. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose that sentence.
- (B) Notice Requirements. Not less than 14 days before a final review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parents or guardian must be notified. The notice must state that the court may impose a sentence upon the juvenile and must advise the juvenile and the juvenile's parent or guardian of the right to legal counsel.
- (C) Appointment of Counsel. If an attorney has not been retained or appointed to represent the juvenile, the court must appoint an attorney and may assess the cost of providing an attorney

as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

- (D) Criteria. In determining whether the best interests of the public would be served by imposing sentence, the court shall consider the following:
- (1) the extent and nature of the juvenile's participation in education, counseling, or work programs;
 - (2) the juvenile's willingness to accept responsibility for prior behavior;
 - (3) the juvenile's behavior in the current placement;
 - (4) the prior record and character of the juvenile and the juvenile's physical and mental maturity;
 - (5) the juvenile's potential for violent conduct as demonstrated by prior behavior;
 - (6) the recommendations of the state institution or agency charged with the juvenile's care for the juvenile's release or continued custody;
 - (7) the effect of treatment on the juvenile's rehabilitation;
 - (8) whether the juvenile is likely to be dangerous to the public if released;
 - (9) the best interests of the public welfare and the protection of public security; and
 - (10) other information the prosecuting attorney or juvenile may submit.
- (E) Credit for Time Served On Probation. If a sentence is imposed, the juvenile must receive credit for the period of time served on probation and committed to a state agency or institution.

NOTE: NEW MCR 6.938 IMPLEMENTS MCL 769.1b(5)-(6), PROVIDING FOR A FINAL REVIEW HEARING PRECEDING THE END OF THE PERIOD FOR WHICH THE JUVENILE IS ON PROBATION AND COMMITTED TO STATE WARDSHIP. AT THE HEARING, THE COURT IS TO DETERMINE, USING CRITERIA DRAWN FROM MCL 769.1b(1), WHETHER TO SENTENCE THE JUVENILE AS THOUGH AN ADULT.



February 4, 200*3*

Corbin R. Davis